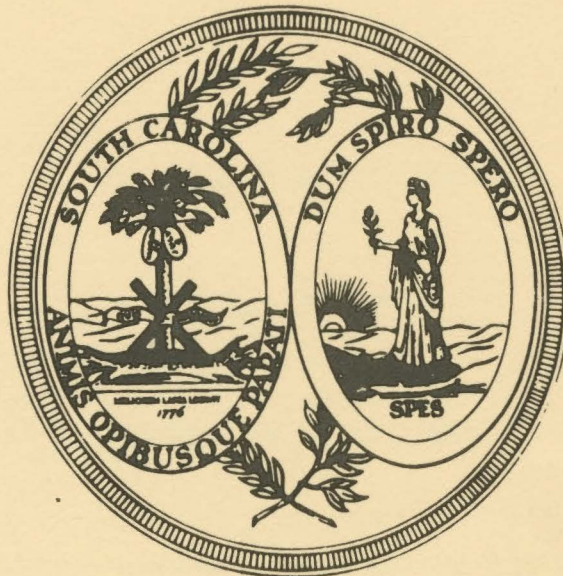


A3A4255
8.P81-2

South Carolina General Assembly



S. C. STATE LIBRARY

JUN 3 0 1982

STATE DOCUMENTS

Legislative Audit Council



State of South Carolina
General Assembly
Legislative Audit Council
A Sunset Review of the
Public Service Commission
June 30, 1982

THE STATE OF SOUTH CAROLINA

GENERAL ASSEMBLY

LEGISLATIVE AUDIT COUNCIL

SUNSET REVIEW OF THE

PUBLIC SERVICE COMMISSION

TABLE OF CONTENTS

Page

CHAPTER I - HISTORY AND ORGANIZATION

| | |
|----------------------------------|----|
| Introduction | 1 |
| History | 4 |
| Organization | 6 |
| PSC Organization Chart | 8 |
| Budget Information | 14 |

CHAPTER II - REGULATION OF MOTOR CARRIERS

| | |
|--|----|
| Introduction | 17 |
| Adverse Effects of Regulation | 19 |
| Motor Carrier Ratemaking | 27 |
| Oversight of Motor Carriers | 38 |
| Enforcement of Truck Safety Laws | 49 |
| Regulation of Railroads | 53 |
| Deregulation: Federal and State Trends | 56 |
| Economic Deregulation: Major Issues | 60 |
| Conclusion | 66 |

CHAPTER III - REGULATION OF UTILITIES

| | |
|---|-----|
| Introduction | 75 |
| Utility Rates | 77 |
| Statutory Base | 86 |
| Utility Ratemaking | 89 |
| Rates Under Bond | 94 |
| Fuel Adjustment Clauses | 107 |
| Construction Work in Progress | 113 |
| Oversight of Utilities | 122 |

CHAPTER IV - ADMINISTRATION OF THE PSC

| | |
|---|-----|
| Introduction | 134 |
| Utility Assessments | 134 |
| Management of Resources and Information | 140 |
| Allocation of Funds | 157 |
| Public Participation | 165 |

CHAPTER V - SUNSET ISSUES AND EVALUATION 167

TABLE OF CONTENTS

(CONTINUED)

| | <u>Page</u> |
|--|-------------|
| <u>APPENDICES</u> | |
| A - PSC Comments | 173 |
| B - List of Tables | 189 |
| C - List of Graphs | 191 |
| D - Average Monthly Residential Electric Bills: U.S. | 192 |
| E - Average Monthly Residential Electric Bills: S.C. | 193 |
| F - Average Monthly Residential Gas Bills | 194 |
| G - Proposal to Transfer the PSC Law Enforce- ment Function to the S.C. Department of Highways and Public Transportation | 195 |

CHAPTER I

HISTORY AND ORGANIZATION

Introduction

Present day State commission regulation has evolved over the past 100 years and is a result of a number of legal, economic and administrative factors. The early thrust was toward competition as the best form of control.

The primary authority to regulate industries stems from two major sources: the Interstate Commerce Clause of the U. S. Constitution and broad interpretation of Federal powers and, at the State level, the power to protect the citizenry, i.e., public welfare.

The first modern day State commissions were established in the early 1900's. The need for continuous regulation based on expert authority and statewide jurisdiction was recognized because the number of private enterprises "affected with the public interest" had increased due to technological and economic growth. Rate regulation, as well as authority over safety, uniform accounting practices, examinations, and audit and property evaluation were all part of the newly formed commissions' activities.

At the Federal level, regulation began in 1887 with the Interstate Commerce Commission (ICC) and saw its greatest growth during and after the 1930's with the establishment of such agencies as the Federal Power Commission, now the Federal Energy Regulatory Commission (electricity and natural gas); the Federal Communications Commission (telephone, telegraph, radio and television); and two transportation regulators, the Civil Aeronautics Board and the Federal Maritime Commission (air and water carriers).

In addition to their constitutional authority, regulatory bodies function under a wide variety of State and Federal statutes and regulations. The 1976 South Carolina Code of Laws, Title 58, Chapters 1-17, 21-23, 27 and 33, as well as Chapter 103, Articles 1-8 of Rules and Regulations, provide the statutory basis for the Public Service Commission.

Section 58-3-140 of the South Carolina Code of Laws gives the Public Service Commission the authority to:

...supervise and regulate the rates and service of every public utility in this State and to fix just and reasonable standards, classifications, regulations, practices and measurements of service to be furnished, imposed or observed and followed by every public utility in this State.

Section 58-17-170 gives the Commission general supervision over railroads and railways and Section 58-23-1010, which deals with motor carriers, states:

The Commission shall supervise and regulate every motor carrier in the State and fix or approve the rates, fares, charges, classifications and rules and regulations pertaining thereto of each such motor carrier.

The Public Service Commission supervises and regulates rates, charges, services, facilities, practices, accounting procedures, the purchase, sale or lease of utility property and the issuance of securities. The Commission also administers The Rural Electric Cooperative Act pertaining to territorial boundaries, as well as the Utility Facility Siting and Environmental Protection Act, the Gas Safety Act and the Registration and Safety Act.

The Audit Council found that although PSC has attempted to remedy some weaknesses pointed out in earlier reports and is handling utility franchises and territorial disputes in an adequate manner, problems

remain which inhibit regulatory effectiveness. The following is a list of recommendations from earlier reviews that have not been implemented:

Cresap, McCormick and Pagett, Management Consultants - 1970

- (1) The motor vehicle inspection function should be transferred to the State Highway Department.
- (2) The legislative base for utility regulation should be reviewed for uniformity of practice as well as for obsolescence. Rules and Regulations should be modified to reflect desired PSC practices on a uniform basis.
- (3) The Legal Division should publish regularly a series of precedent decisions, giving the basis for each decision.

Cresap, McCormick and Pagett, Management Consultants - 1976

- (1) The Transportation Division's Motor Carrier Inspection Functions should be transferred to the Highway Department.
- (2) A completely revised statutory base should be prepared for legislative consideration. A mission statement and primary goals should be established for each regulated industry.
- (3) The General Counsel of the PSC should at once prepare a Precedent Decision Manual and the Legal Division of the PSC should have responsibility for keeping it up to date.

Legislative Audit Council - 1977

- (1) The Transportation Division motor carrier inspection functions should be transferred to the Highway Department.
- (2) A completely revised statutory base should be prepared for legislative consideration. PSC should develop goals and mission statements for regulated industries.
- (3) The Commission's General Counsel should develop a Decision Precedent Manual.
- (4) PSC should develop a system for monitoring the efficiency of utility companies.
- (5) Information required by the Public Service Commission should be collected and generated by the Commission staff or by an independent party hired and supervised directly by the PSC.

- (6) PSC should develop and utilize a manual of administrative procedures.
- (7) PSC should reconcile its physical inventory to its property records and investigate any differences.
- (8) PSC should discontinue reimbursement of the cost of meals to its law enforcement personnel, unless those persons are directed to perform duties outside of their assigned areas.

Joint Legislative Study Committee - 1978

- (1) PSC should promulgate Rules and Regulations to ensure that the fuel procurement practices and fuel purchase contracts are closely monitored and efficient.
- (2) PSC should conduct a thorough review of its files and initiate procedures to cancel all dormant authority.
- (3) The Commission should promulgate Rules and Regulations to outline written policies or regulations on what carriers are audited; when carriers are to be audited; or procedures to be utilized by the staff when audits are performed.

Office of the State Auditor - 1980

- (1) PSC should improve internal control over cash receipts.
- (2) PSC should develop formal controls to ensure the accuracy of the equipment inventory.

The Council, in its current report, notes that although these previous reports offered substantial review, nothing has been done to correct the above deficiencies. Specific recommendations are herein made for improvements. The terms Public Service Commission, PSC and Commission are used interchangeably throughout the report.

History

The two major divisions of the present day South Carolina Public Service Commission, the Utilities Division and the Transportation Division, developed from separate regulatory bodies established by the General Assembly.

In 1878, the Legislature created a Railroad Commission to supervise and regulate the operation of railroads in South Carolina. This mandate was amended in 1928 when jurisdiction over other types of "for hire" motor carriers was transferred from the Highway Commission. These Acts form the legislative basis for the Transportation Division.

Water, gas and electric utilities came under the jurisdiction of the Railroad Commission in 1922 through consolidation with the existing Public Service Commission. The Railroad Commission had been granted previous authority over telephone and telegraph operations. These actions, with the later addition of radio common carriers and wastewater utilities, formed the basis for the present Utilities Division.

In 1922, the consolidation of the Railroad and Public Service Commissions provided for a total of seven commissioners. In 1935, the Public Service Commission became the official name of this regulatory body.

Public Service Commissioners are elected by the General Assembly upon nomination by the Public Service Merit Panel, which was constituted in 1979. Commissioners are elected to four-year terms as specified in Section 58-3-25 of the South Carolina Code, which directs that considerations of knowledge and experience in fields such as business, government, accounting, law, engineering, statistics, consumer affairs and finance be made.

Statutes define the Public Service Commission districts as those based upon congressional districts established by the General Assembly pursuant to the official United States Census of 1980. The composition of the current Commission is shown in Table 1.

TABLE 1

COMPOSITION OF THE SOUTH CAROLINA PUBLIC SERVICE COMMISSION¹

| <u>District</u> | <u>Counties</u> | <u>Commissioner</u> | <u>Term²</u> |
|-----------------------|---|---|-------------------------|
| 1st District | Beaufort, Charleston, Colleton, Hampton, Dorchester, Jasper, Berkeley precincts 7, 11, 26, 28, 29, 30 as defined by Act 225 of 1977. | Marjorie Amos-Frazier | 1980- |
| 2nd District | Lexington, Richland, Calhoun, Orangeburg, Bamberg, | Henry G. Yonce | 1971- |
| 3rd District | Allendale, Barnwell, Aiken, Edgefield, Saluda, Greenwood, McCormick, Abbeville, Anderson, Pickens, Oconee | Guy Butler, Vice-Chairman | 1963- |
| 4th District | Greenville, Spartanburg, Union | Fred A. Fuller, Jr. | 1969- |
| 5th District | Cherokee, York, Chesterfield, Fairfield, Newberry, Laurens, Lancaster, Kershaw, Lee, Sumter, Chester | Cecil A. Bowers (J. Lewis Moss - incumbent 1953-82) | 1982- |
| 6th District | Marlboro, Darlington, Dillon, Georgetown, Horry, Marion, Williamsburg, Florence, Clarendon, Berkeley precincts 1, 3, 4, 5, 6, 8, 9, 12, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 27 as defined by act 225 of 1977. | Carolyn H. Maas | 1980- |
| Commissioner at large | ----- | Rudolph Mitchell, Chairman | 1973- |

¹Current as of June 2, 1982.

²Terms will be decided pursuant to Section 58-3-20 of the South Carolina Code of Laws.

Organization

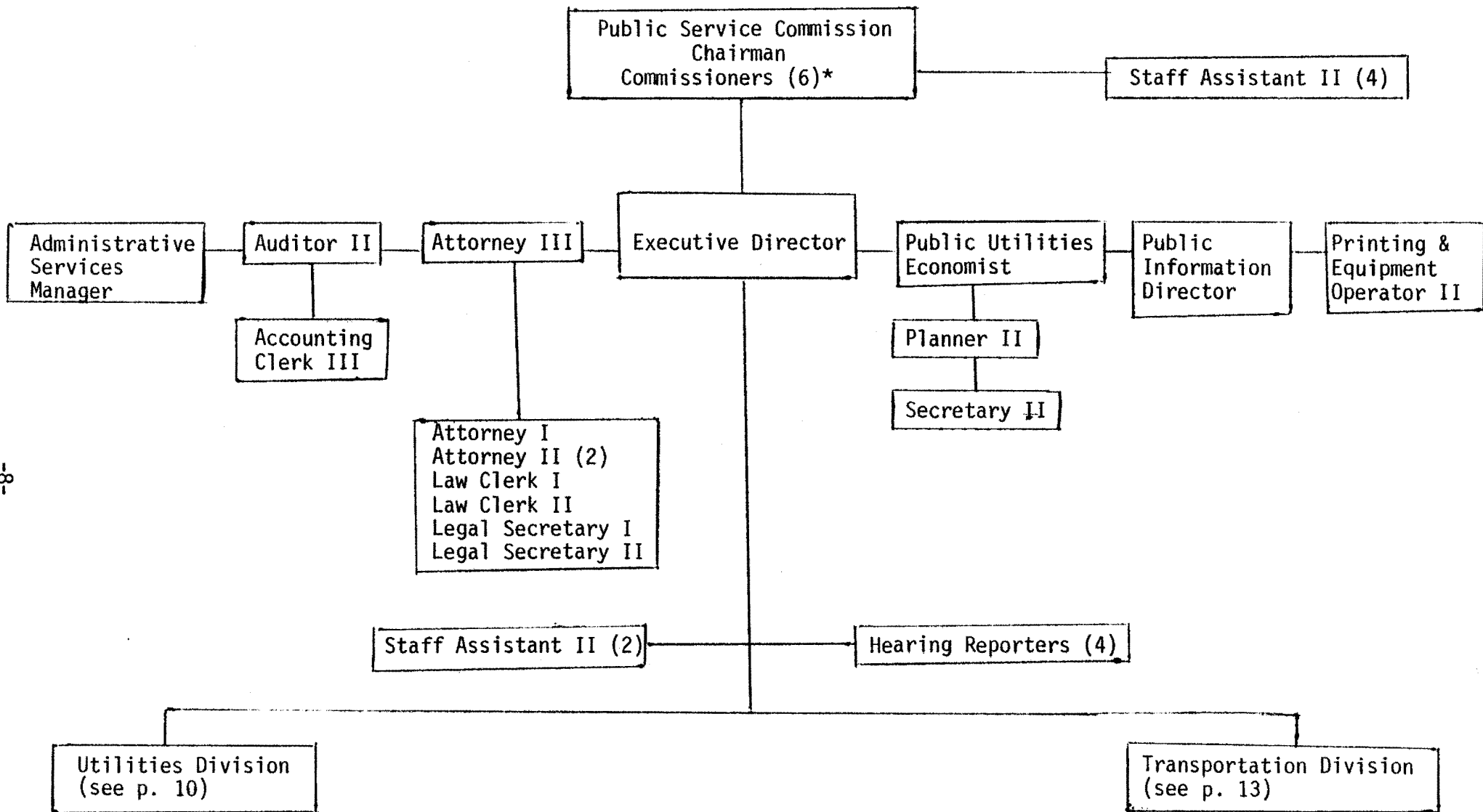
The Commission's goal, as stated in the Five-Year Plan, is to see that the public receives the best services possible at the lowest possible cost. To carry out its statutory mandate, Commission operations are

administered through three divisions - Administration, Utilities and Transportation. The following section contains organization charts and details functions of each Division.

Administration Division (see p. 8)

The Administration Division provides overall administrative support to the Commissioners and supervises the activities of the Utilities and Transportation Divisions. The Division includes an Executive Director who serves as chief staff officer of the Commission and is thus responsible for providing direction and staff leadership in formulating and implementing agency policy; preparing, directing and monitoring agency activities; and such other activities as are required by the Commission. He also serves as the liaison between the staff and the Commissioners.

The Administration Division provides legal assistance to the Commissioners in the form of a General Counsel assigned by the Attorney General, additional legal and clerical staff, and court reporters who are responsible for transcribing the testimony given in Commission hearings. The Public Utilities Economist is responsible for directing research services and analyzing the effect of the PSC's regulatory activity on the public and the economy of South Carolina. He is supervised by the Executive Director as are the Public Information Director and the Printing Operator.



* Number of positions if more than one.

Total Positions in Administration Division: 34.

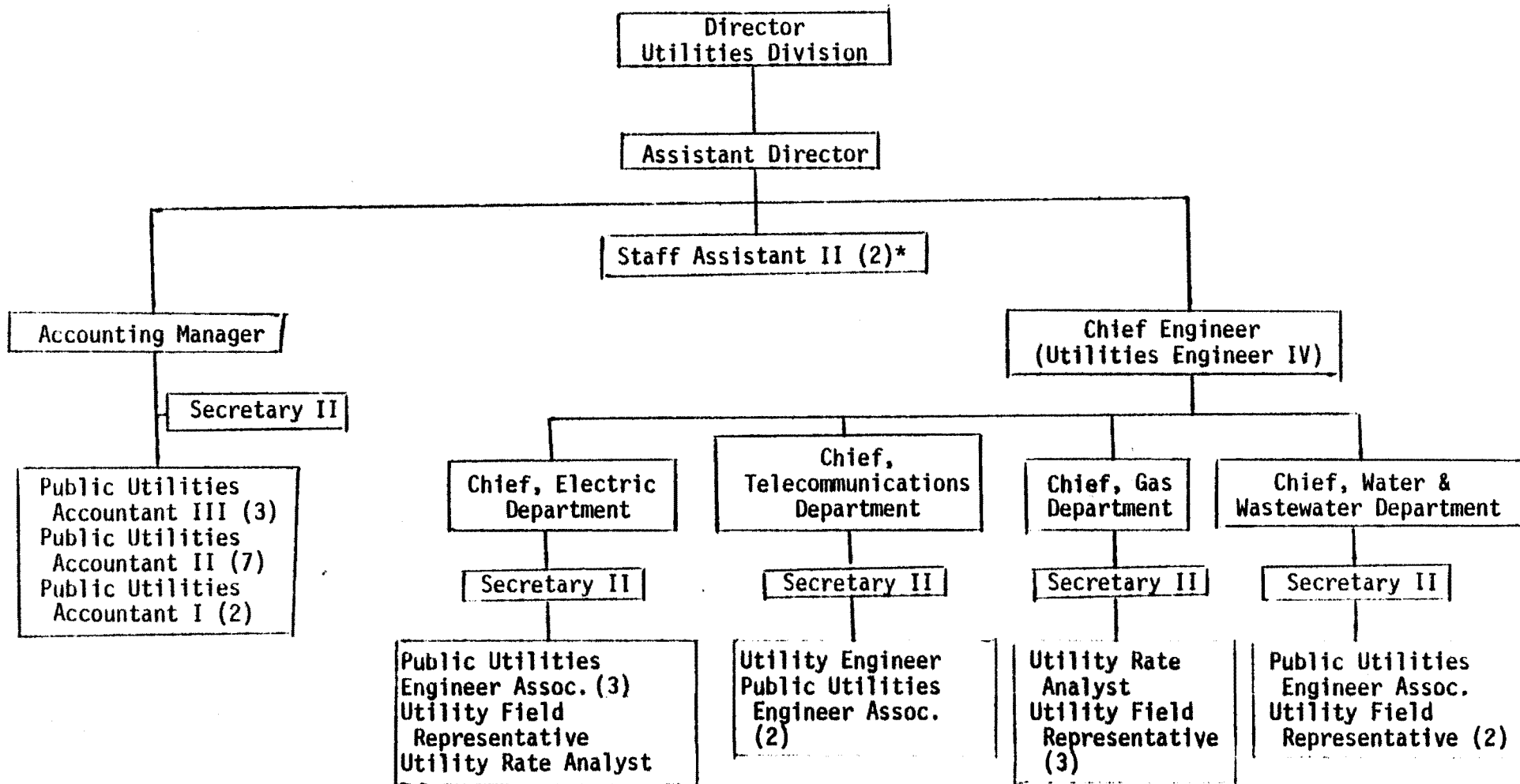
Utilities Division (see p. 10)

The Utilities Division is divided into five departments: Accounting, Electric, Gas, Telecommunications, and Water/Wastewater. The Director of the Utilities Division plans and supervises the activities of the other five departments and provides administrative and other services as required by the departments, the Executive Director or the Commissioners.

The Accounting Department examines the books and records of utility companies prior to their appearance before the Commission in rate proceedings and performs accounting duties for the Division. The staff uses an Auditape System (computer program) for some reviews. In addition, this Department is responsible for conducting periodic audits to ascertain whether utilities are in compliance with proper accounting procedures. The Department also performs special audits (such as fuel adjustment clause audits) when required. The Commission's Chief Engineer supervises Department Chiefs. He coordinates rate cases and staff reports for cases. He also has overall responsibility for engineering functions.

The Electric, Gas, Telecommunications, and Water/Wastewater Departments perform similar functions in their respective areas. They handle consumer complaints concerning service or billing, maintain test equipment, perform safety and service tests as necessary and prepare information for use in rate cases.

In addition, the Electric Department is responsible for staff support in enforcement of the Rural Electric Cooperative Act and the Utility Facility Siting and Environmental Protection Act, and the Gas Department enforces the State and Federal gas pipeline safety acts.



* Number of positions if more than one.

Total Positions in Utilities Division: 42.

Transportation Division (see p. 13)

The Transportation Division is divided into four departments: License and Permit; Rails and Tariffs; Law Enforcement and Safety; and Registration.

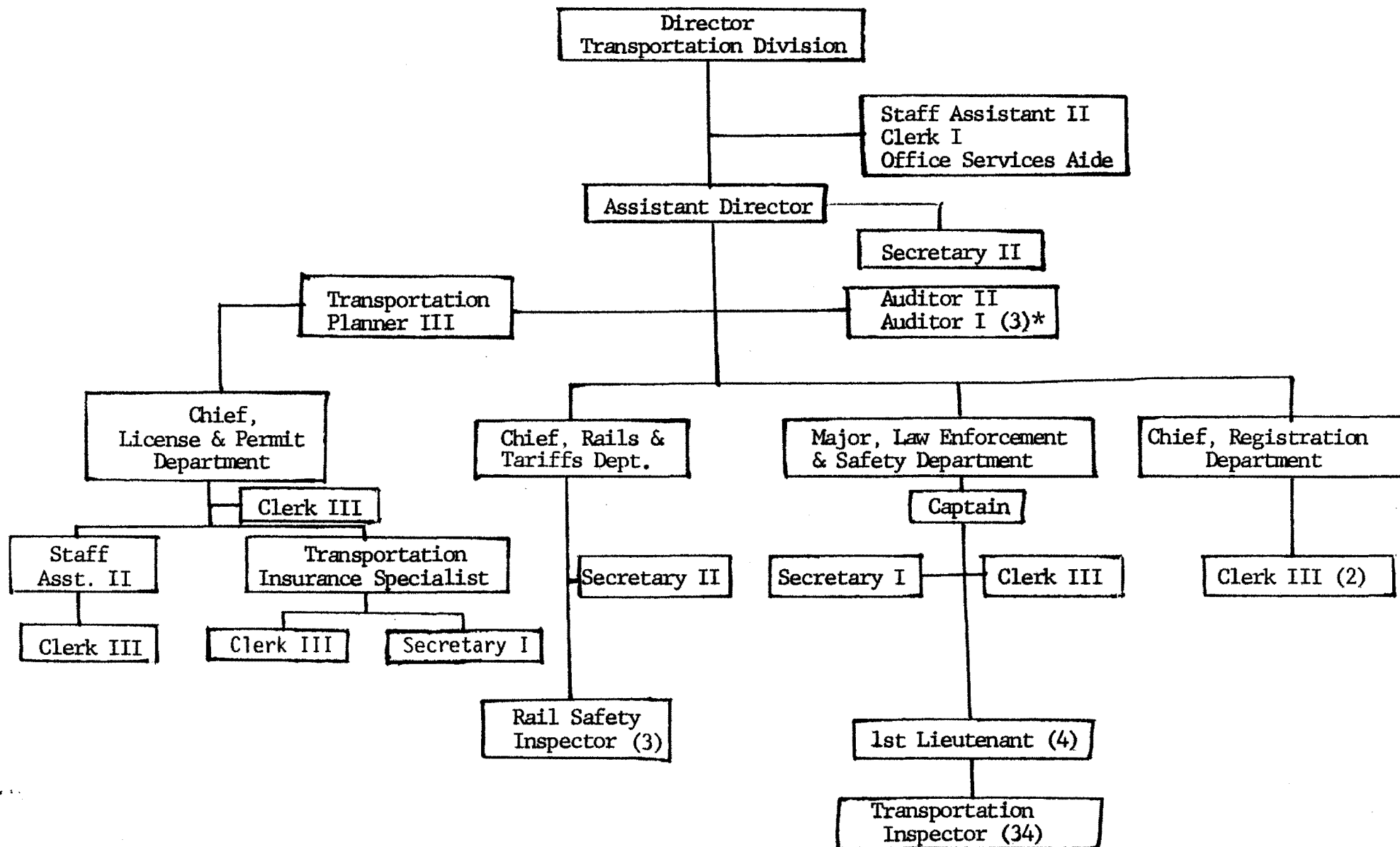
The Director of the Transportation Division is responsible for planning and supervising the activities of the four departments. In addition, his administrative staff provides the Division with an accounting and auditing capability. These accountants are responsible for auditing motor carriers and railroads to determine whether proper accounting procedures are being utilized, proper rates are on file, and that all other activities are in compliance with the law. Audits are also conducted for rate increase applications.

The License and Permit Department processes applications to acquire new authority (operating territory), amend existing authority and transfer authority. This Department also ensures that motor carriers are properly insured.

The Rails and Tariffs Department is responsible for examining and analyzing all proposed rate changes and advising the Commission during rate cases. The Department also conducts rail safety investigations and inspections, and coordinates disaster and defense readiness activities for the Commission.

The Law Enforcement and Safety Department enforces compliance with South Carolina's Motor Vehicle Carrier Act and the U.S. Department of Transportation Safety Rules and Regulations. Its responsibilities include motor carrier inspections to ensure that carriers are authorized to carry the commodities they haul and that their equipment meets safety standards. Accident investigations are also performed by this staff.

The Registration Department is responsible for registering certified and exempt commodity interstate motor carriers. Registration fees are charged and identification stamps for motor carriers operating into or through the State are sold. Field enforcement is the responsibility of the Law Enforcement and Safety Department.



* Number of Positions if more than one.

Total positions in Transportation Division: 68.

Budget Information

For the five-year period beginning July 1, 1976 and ending June 30, 1981, the Commission obtained revenues in the amount of \$16,315,565 (see Table 2). During this period, the Commission expended \$14,948,741 (see Table 3).

Staff positions cost the Commission \$2.44 million in FY 80-81, or 65% of its total expenditures. Travel accounted for 9% of the Commission expenditures. Rent, telephone and postage were the other major operating expenditures over the past five years.

TABLE 2

PUBLIC SERVICE COMMISSION SOURCE OF REVENUES^a

FY 76-77 THROUGH FY 80-81

| Revenue Source | FY 76-77 | FY 77-78 | FY 78-79 | FY 79-80 | FY 80-81 |
|--|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Utility Assessments ^b | \$1,474,957.16 | \$1,598,535.43 | \$1,597,607.59 | \$1,939,705.88 | \$2,078,674.79 |
| Railroad Assessments | 47,812.00 | 50,027.00 | 59,483.00 | 114,051.00 | 124,335.00 |
| Motor Carrier Road Tax | 778,005.00 | 870,499.00 | 985,619.00 | 1,076,211.00 | 1,162,401.00 |
| Motor Carrier Registration Stamps ¹ | 498,742.48 | 534,805.54 | 592,565.54 | 686,529.11 | 780,164.70 |
| Motor Carrier License Tags ² | 849,330.19 | 856,253.39 | 936,649.15 | 944,419.09 | 940,494.93 |
| SUBTOTAL | <u>\$3,648,846.83</u> | <u>\$3,910,120.36</u> | <u>\$4,171,924.28</u> | <u>\$4,760,916.08</u> | <u>\$5,086,070.42</u> |
| Amount Returned ³ to Cities & Towns | <u>947,095.80</u> | <u>986,001.10</u> | <u>1,122,164.32</u> | <u>1,147,542.32</u> | <u>1,059,508.96</u> |
| NET TOTAL | <u>\$2,701,751.03</u> | <u>\$2,924,119.26</u> | <u>\$3,049,759.96</u> | <u>\$3,613,373.76</u> | <u>\$4,026,561.46</u> |

¹The figures include balance from previous years.²Net figures presented.³Balance of Motor Carrier License Tag revenues distributed to cities and towns as required by Section 58-23-630 of the South Carolina Code.Source: ^aPublic Service Commission Annual Reports.
^bOffice of Comptroller General.

TABLE 3
PUBLIC SERVICE COMMISSION
EXPENDITURES BY DIVISION AND SOURCE OF FUNDS
FY 76-77 THROUGH FY 80-81

| <u>Expenditures by Division</u> | <u>FY 76-77</u> | <u>FY 77-78</u> | <u>FY 78-79</u> | <u>FY 79-80</u> | <u>FY 80-81</u> |
|---------------------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| Commissioners | \$ 292,664 | - | - | - | - |
| Administration | 303,855 | \$ 656,370 | \$ 765,021 | \$ 912,951 | \$1,150,362 |
| Utility Regulation | | | | | |
| Management | 152,441 | 190,543 | 191,336 | 238,306 | 245,493 |
| Accounting | 173,167 | 207,108 | 214,571 | 219,702 | 274,400 |
| Telephone | 49,934 | 61,253 | 64,182 | 83,148 | 92,626 |
| Gas | 95,314 | 97,204 | 98,218 | 80,808 | 109,587 |
| Water and Sewage | 61,562 | 64,795 | 69,943 | 58,250 | 77,970 |
| Electric | 72,499 | 80,875 | 105,613 | 107,837 | 121,829 |
| Transportation | | | | | |
| Management | 141,117 | 168,110 | 199,684 | 246,731 | 238,307 |
| Licensing | 47,493 | - | - | - | - |
| Rates | 48,884 | - | - | - | - |
| Law Enforcement | 418,214 | - | - | - | - |
| Railway | - | 29,048 | 38,968 | 87,897 | 149,724 |
| Motor Transportation | - | 517,268 | 518,866 | 562,498 | 611,793 |
| Registration and Safety | 247,444 | 300,052 | 281,877 | 341,106 | 314,576 |
| Employee Benefits | <u>241,511</u> | <u>279,411</u> | <u>317,334</u> | <u>354,716</u> | <u>404,375</u> |
| TOTAL EXPENSES | <u>\$2,346,099</u> | <u>\$2,652,037</u> | <u>\$2,865,613</u> | <u>\$3,293,950</u> | <u>\$3,791,042</u> |
| TOTAL PERSONNEL | <u>135</u> | <u>142</u> | <u>144</u> | <u>145</u> | <u>145</u> |
| <u>Source of Funds</u> | | | | | |
| State General Funds | | | | | |
| Balance from Prior Year | \$ 61,367 | - | \$ 11,569 | \$ 73,135 | - |
| Appropriation | 2,241,924 | \$2,410,729 | 2,618,786 | 2,912,384 | 3,612,578 |
| Supplemental Appropriation | - | 11,569 | 73,135 | - | - |
| Lapsed | -238,484 | -96,437 | -88,134 | -154,921 | \$ -95,120 |
| Carried Forward | - | -11,569 | -73,135 | - | - |
| Federal Funds | 10,226 | 11,390 | 871 | 75,886 | 273,584 |
| Other Funds | <u>271,066</u> | <u>326,355</u> | <u>322,521</u> | <u>387,466</u> | |
| TOTAL FUNDS | <u>\$2,346,099</u> | <u>\$2,652,037</u> | <u>\$2,865,613</u> | <u>\$3,293,950</u> | <u>\$3,791,042</u> |

Source: South Carolina Budget and Control Board

CHAPTER II

REGULATION OF MOTOR CARRIERS

Introduction

Motor carrier regulation, at the Federal level, began with The Federal Motor Carrier Act of 1935. The Interstate Commerce Commission (ICC) became responsible for regulating all phases of "for hire" interstate trucking except certain farm commodities. ICC regulations changed very little until The Federal Motor Carrier Act of 1980.

Although it did not result in total deregulation, the revised Act significantly reduced Federal regulation by providing for four major changes: easier entry into the business; subjection of interstate rate bureaus to antitrust laws; greater freedom to establish rates; and reduced operating restrictions on carriers.

Currently, the South Carolina Public Service Commission regulates approximately 1,300 intrastate motor carriers in much the same way as it did in 1928. All intrastate "for hire" carriers of household goods, freight, mobile homes, parcel post, and petroleum, including taxis, and buses, are regulated by PSC. In addition, approximately 21,000 interstate and exempt "for hire" carriers operate in South Carolina but are not subject to economic regulation by PSC.

Carriers exempt from regulation include vehicles used to transport persons to and from schools and churches, U. S. mail carriers, wreckers and carriers hauling dairy and farm products from farm-to-market and lumber from forests. In addition, PSC does not regulate any carrier transporting passengers or property solely within a municipality or transporting passengers within a five-mile radius of a municipality.

Operating revenues for intrastate and interstate carriers for year ending December 31, 1980 amounted to over \$12.24 billion (see Table 4). Since PSC does not keep jurisdictional information on revenues for intrastate carriers alone, this figure could not be ascertained.

TABLE 4
REGULATED INTRASTATE AND INTERSTATE TRANSPORTATION
OPERATING REVENUES AND TOTAL CUSTOMERS
YEAR ENDED DECEMBER 31, 1980

| <u>Transport</u> | <u>Operating Revenues</u> | <u>Total Customers</u> |
|--|-------------------------------------|------------------------|
| Motor Freight Carriers | \$ 9,113,297,957.00 ¹ | Not Available |
| Motor Passenger Carriers | 709,266,145.00 ¹ | Not Available |
| Railroad Freight and Passenger Carriers | <u>2,421,187,437.00²</u> | <u>Not Available</u> |
| TOTAL | <u>\$12,243,751,539.00</u> | <u>Not Available</u> |

Source: ¹South Carolina Public Service Commission

²Public Service Commission Annual Report, 1980-1981.

The Audit Council's review of the Transportation Division of PSC revealed major problems in the regulation of motor carriers. The Council found that regulations cause carriers to operate inefficiently, allow carriers to fix prices, limit competition in the industry, and allow other practices which cause higher than necessary shipping rates to be passed on to consumers. In addition, agency practices do not provide adequate oversight of the industry and have also contributed to trucking rates that are higher than necessary. These problems, which cause economic

regulation of carriers to protect the industry more than the public, are discussed in the following pages.

Adverse Effects of Regulation

Introduction

Statutes and Rules and Regulations concerning the regulation of motor carriers are vague and outdated. Restrictive agency practices have developed which have an adverse effect on the industry and have increased costs to consumers.

PSC Rules and Regulations and agency practices have both restricted entry into the trucking industry and adversely affected the efficiency of motor carriers. Regulations that allow the restriction of certification, territories and commodities, and allow the sale of certificates have the effect of raising operating costs to truckers and producing higher rates to shippers and consumers.

Section 103-134 (I) of South Carolina Rules and Regulations provide that any individual or firm wanting to serve the public as a "for hire" carrier must apply to PSC for a Certificate of Public Convenience and Necessity. The application must specify both the commodity and the area the applicant wishes to serve. Applications must be advertised in proposed service areas. Any carrier already providing service can protest an application on the grounds that the service is already provided.

To become certified, an applicant must prove he is fit, willing and able to serve the public. To do this, a list of assets must be submitted to PSC. The applicant must also prove public convenience and necessity. To test this, the Commission's practice is to consider three questions:

(1) Would the new operation serve a useful public purpose responsive to a public demand or need; (2) Can this public purpose be served as well by existing carriers; and (3) Could it be served by the applicant without endangering the operations of existing carriers contrary to the public interest.

If the carrier can meet these tests, the Commission grants him operating authority for certain commodities in assigned areas. Insurance must be purchased and licensing requirements for safety must be met. A carrier may later sell his certificate of authority if he chooses, although the certificate was initially granted by PSC at no charge to the carrier.

Regulations Restrict Entry

Regulations that allow the Commission to place the "burden of proof" on the applicant to show public convenience and necessity make entry into the trucking industry difficult. Protestants who show that their operations will be endangered by an applicant's competition contribute to certificate denials and amendments for carriers who are fit and able to provide a service.

When one carrier was unable to obtain witnesses to testify that his services were needed, the Commission denied his application for operating authority. In another case, a South Carolina carrier, who had PSC authority to haul petroleum for only three shippers, applied for authority to haul petroleum for the general public. Three carriers with authority to serve the proposed areas protested the application. Although the applicant had six witnesses testify they needed his service, the Commission ruled the applicant did not prove that public convenience and necessity were not already reasonably served by existing carriers. The applicant was denied the right to serve the general public although he had the trucks and equipment available.

Another carrier had authority to haul aggregate goods between 15 counties and from these counties to other areas in the State. This individual applied for authority to haul aggregate goods anywhere in the State. Six carriers protested this application. The applicant provided five witnesses who testified to the Commission they needed his service. Although the applicant owned the equipment to serve areas outside of the 15 county restriction, PSC denied him authority to do so on the grounds he did not prove the public was not already reasonably served by existing carriers.

Applicants amend requests in order to avoid protests. In one instance, an individual applied for authority to haul small packages within a 75 mile radius of Greenwood, South Carolina. Two existing carriers opposed this application. At the hearing, the applicant amended the request eliminating service proposed in Spartanburg, Anderson and Greenwood counties. The protestants withdrew their petitions and the applicant was then granted operating authority.

In another case an applicant sought PSC authority to haul packages within a 15 mile radius of Columbia, South Carolina in vans no larger than one ton and restricted to cartage of nonnegotiable items. Three carriers protested the application. The applicant then amended his application to one-hour pickup for same-day delivery and declared that neither bank-related nor financial accounting documents would be carried on a regular basis. Two protestants then withdrew and the applicant was able to obtain operating authority.

Because the Commission places the burden of proof on the applicant to show public convenience and necessity, entry into the trucking industry is made difficult. Applicants must take time off from work to

appear at hearings and have shippers testify before the Commission that they need the applicant's service. Applicants unable to obtain shipping witnesses to testify to the need for their service are not granted certificates. An applicant may be fit, willing and able to service an area and shippers may testify they need the service; however, the applicant can still be denied authority if the protestant convinces the Commission a new carrier will harm his business.

The Federal Motor Carrier Act of 1980 eased entry into the trucking business at the interstate level. This Act focuses on the fitness of applicants and places the burden of proof on the protestant to show another carrier is not needed. In addition, Florida, Arizona and Maine recently deregulated intrastate trucking, allowing any carrier to enter the business and placing no restrictions on hauling goods or passengers. Wisconsin and Kansas are moving toward deregulating intrastate carriers. When regulation unnecessarily restricts entry into the industry it does not alleviate the effect of monopolistic pricing and limited competition.

Shippers and consumers are not assured of receiving the best service for the least cost as long as entry is limited. Placing the burden of proof on the applicant protects existing carriers from competition and can have a negative effect on service. Existing carriers may not be providing the best or least expensive service possible or the particular service an applicant proposes, but can be protected from competition if they protest that their business may be harmed.

As long as regulated carriers can use protests as a leverage to get applications amended or keep individuals out of the industry, existing carriers will continue to have excessive influence in keeping new carriers

from competing against them in the trucking industry. Ninety-six percent of the complaints received by the Law Enforcement and Safety Department in the past four years concern carriers operating without PSC authority (see p. 144). Motor carriers use regulations to their advantage to protect their business from competition and to increase profits.

Regulations Affect Efficiency

PSC Rules and Regulations allow the Commission to employ practices which adversely affect the efficiency of motor carriers in South Carolina. The Audit Council reviewed commodity and territory restrictions imposed on motor carriers and found instances of inefficiency where carriers are forced to backhaul empty, carry limited commodities and operate at less than truckload capacity in limited territories. These restrictions cause carriers to incur higher operating costs and to charge more than necessary to provide services.

The following are examples of limitations and restrictions which cause intrastate carriers to operate inefficiently:

- One general commodity carrier is restricted to hauls that begin or end in one assigned county. If the carrier can only get a backhaul to a neighboring county, he cannot legally accept it.
- One charter bus service is limited to 11 passengers although the owner has buses that can carry more than 11 passengers.
- One charter bus service is limited to two 45-passenger buses and one 30-passenger bus and can operate only within a 25-mile radius of Charleston.
- One package delivery service is limited to packages up to 500 pounds and a cargo maximum load of 500 pounds. This carrier can operate only in one county.
- One general commodities carrier is limited to hauls within a 15-mile radius of Bluffton.

- One carrier is limited to hauls which because of size, weight or unusual dimensions require the use of specialized handling, rigging, or other special equipment.
- One carrier can haul cotton in bales between six counties but is limited to hauling only unfinished cotton piece goods and cotton yarn in three of these counties.
- One carrier has authority to haul commodities from Charleston to eight counties in the upper part of the State. This carrier is restricted from hauling commodities within Charleston or from seven counties back to Charleston. If the carrier cannot get a backhaul from the one county allowed, he has to return empty.
- One carrier can haul oyster shells from Beaufort and Georgetown Counties to Laurens County. However, the carrier is restricted from delivering the shells to any location between Beaufort, Georgetown and Laurens County.
- One package delivery service is limited to using vans under one ton.
- One carrier is restricted from hauling commodities to a city he may routinely drive through. The carrier, who routinely delivers goods from Camden to Charleston and Beaufort, cannot deliver goods from Charleston to Beaufort or vice versa.
- One package delivery service is restricted from using trucks larger than $\frac{1}{2}$ ton, serving retail, department stores, specialty shops or warehouses, and delivering packages larger than 40 pounds.
- All 1,300 intrastate carriers are restricted or limited in some manner by PSC.

PSC's Rules and Regulations allow the Commission to restrict the operating rights of truckers which results in overall inefficiency and waste. This is in contrast to the initial purpose of regulation which was to enable the trucking industry to provide good reliable trucking services.

The Federal Motor Carrier Act of 1980 recognized inefficiencies the ICC imposed on regulated truckers. The Act also eliminated unreasonable restrictions wasteful of fuel, inefficient or contrary to the public interest. Florida, Arizona and Maine have deregulated intrastate trucking and place no restrictions on hauling goods or passengers.

Restrictions placed on motor carriers by regulators cause carriers to waste gas and incur unnecessary wear on equipment. This operating inefficiency yields higher operating costs and results in carriers charging more than necessary to deliver goods. The Audit Council could not determine the additional costs incurred because of PSC restrictions in South Carolina. The Congressional Budget Office estimates that, nationwide, regulations that limit the range of commodities hauled, number of counties carriers can serve, number of passengers allowed, and other similar restrictions increased carriers' costs and, therefore, rates \$8 billion annually.

Certificates Increase Motor Carrier Costs

Motor carriers regulated by PSC can sell their "operating rights" to carriers wanting to enter the motor carrier business. Selling government "operating rights" adversely affects truckers and increases the costs of motor carrier services. These costs are passed on to shippers and consumers.

Section 103-135 of PSC's Rules and Regulations Pertaining to Motor Carriers allows carriers to sell, lease or transfer their operating rights. PSC does not set any limit on the selling price for certificates but does make the following three restrictions: the transfer will not adversely affect the public; the person acquiring the certificate is fit, willing, and able to perform the service; and all services under the certificate have been continuously offered and reasonably provided to the public for a period of not less than 12 months prior to the filing date of the transfer.

In one case, a carrier paid \$200,000 for the right to haul fuel oil, general commodities, and household goods in various places in South Carolina. Another carrier paid \$75,000 for the right to haul bulk petroleum and household goods in certain areas in the State. A mobile home mover paid \$9,000 to another carrier for the rights to move trailers from one county in South Carolina. These "rights" are granted by PSC to carriers free of charge. Carriers who then sell these rights are profiting from State government regulations.

In addition, carriers who do not want to sell can lease their certificates to another carrier. For example, one carrier leased his certificate to haul general commodities to another carrier for \$300 per month. Another carrier is leasing the "right" to operate for \$225 per month.

Because PSC limits the number of certificates issued, existing certificates can become a valuable asset. The holder of a PSC certificate can protest any new applicant from obtaining certification to compete against him. If an applicant is denied a certificate by PSC, he can purchase an existing certificate if a holder wants to sell. Between November 1978 and December 1981, 25 carriers paid over \$650,000 to purchase existing certificates. This amount was for the exchange of a paper granting operating rights. No equipment exchange was involved.

Florida motor carriers were able to sell their certificates until the State deregulated motor carriers in July 1980. Now, Florida allows full and free competition and carriers are not required to have PSC approval to enter the trucking business. Arizona deregulated intrastate trucking effective July 1982, allowing full and free entry into the trucking business. Maine also deregulated its motor carriers in January 1982.

Regulation should not protect the industry at the public's expense. Protection of the public's welfare and interest should be paramount in regulation.

In order to cover operating costs, the motor carrier must pass the cost of purchased certificates on to the consumer. According to an estimate by the American Enterprise Institute for Public Policy Research, certificates are worth 15% to 20% of the annual sales of truck firms; nationwide, certificates may be worth \$3 to \$4 billion. Without regulation, there would be no certificates to buy or lease and this savings could be passed on to the consumers.

In conclusion, the adverse effects of regulation could be eliminated by allowing full and free competition within the industry. The Federal government, as well as other states, has attempted to eliminate restrictive and inefficient practices through economic deregulation of the motor carrier industry. In South Carolina, these problems as well as the following administrative problems could be overcome through economic deregulation and abolishment of the PSC Transportation Division.

Motor Carrier Ratemaking

Introduction

The Audit Council reviewed PSC's method for establishing motor carrier rates and found several problems. First, PSC allows motor carriers to collectively fix rates, a practice which the Federal government has ruled to be illegal in five other southern states. Second, PSC has no written policies or audit guidelines for auditing motor carriers to determine the need for rate increases. In addition, insufficient information

is reviewed by the agency to determine the need for rate increases. These problems are discussed in the following pages.

Collective Ratemaking Increases Rates

Collective ratemaking increases carrier rates and may be in violation of antitrust laws. PSC allows motor carriers who are members of the Motor Truck Rate Bureau (MTRB) to establish collective rates charged to ship goods within South Carolina. This type of ratemaking allows all member carriers in the same group to charge the same rate for service, regardless of differences in operating costs. This type of price fixing also prevents full and free competition and has been ruled to be in violation of Federal law in five southern states.

Approximately 400 carriers, representing 50% of all South Carolina intrastate freight carriers, are MTRB members. Membership for household goods movers represents approximately 97% of all carriers of this type in the State. Other members include carriers of commodities, petroleum and other similar freight carriers.

The MTRB submits rate increase requests to PSC when members determine they need an increase. The request, which includes expenditure and revenue reports of various carriers, is reviewed by the Commission to determine the need for an increase. To determine this need, the Commission considers the operating ratio of carriers. An operating ratio is determined by dividing a carrier's total operating expenses by its operating revenues. The lower the ratio, the higher the profits. PSC considers that a ratio of 94% is fair and reasonable and that those with ratios below 94% are earning more than fair profits.

PSC allows the MTRB to publish collective rates agreed upon by its members instead of approving rates for individual participants based on each carrier's operating costs (the practice for nonmembers of MTRB). For example, if the MTRB is granted a general commodities increase, all member carriers hauling general commodities receive the increase. Also, if the MTRB is granted a rate decrease for a specific freight, all carriers hauling that freight are affected by the decrease. All freight carriers, except for aggregate haulers, can charge only the fixed rate approved by PSC. There is no zone established for rates. Carriers cannot charge higher or lower rates and are often fined for offering discount rates without PSC approval in an effort to compete.

Collective rate setting contributes to higher customer rates. This situation occurs because PSC does not set rates according to an individual carrier's operating ratio. For example, 243 general commodity carriers belonging to the MTRB received the same increase in November 1981. The Commission reviewed financial reports from only six (2.5%) carriers requesting increases and approved an increase for all 243. The six carriers reviewed had operating ratios ranging from 86% to 99% (see Table 5). The Commission considers a ratio of 94% to be fair and reasonable.

TABLE 5
ANALYSIS OF GENERAL RATE INCREASES AWARDED TO
MOTOR TRUCK RATE BUREAU MEMBERS
CALENDAR YEARS 1980 AND 1981

| <u>MTRB</u> <u>Type Carrier</u> | <u>Rate</u> | <u>Increase</u> | <u>Number of Carriers</u> | | <u>Operating</u> |
|------------------------------------|------------------|-----------------|---------------------------|----------------|-------------------------|
| | <u>Requested</u> | <u>Granted</u> | <u>Received</u> | <u>Audited</u> | <u>Ratio Ranges of</u> |
| | | | <u>Increases</u> | <u>by PSC</u> | <u>Audited Carriers</u> |
| General | | | | | |
| Commodities | 5-25% | 5-10% | 243 | 6 | 86.2 - 99.0% |
| LPG Carriers | 6% | 6% | 19 | 2 | 87.3 - 98.4% |
| Bulk Petroleum | 6-13% | 6-13% | 19 | 5 | 85.8 - 107.8% |
| Asphalt | | | | | |
| Carriers | 5-15% | 5-15% | 19 | 5 | 85.8 - 107.8% |

Source: South Carolina Public Service Commission Records.

The Audit Council randomly sampled 24 (10%) of the 243 commodity carriers receiving collective increases and found a range of operating ratios from 61% to 123% rather than 86.2% to 99.0% as found by PSC's sample. All member carriers received the same increase even though nine carriers, in the Council's sample, reported operating ratios under the Commission's "fair and reasonable" 94%.

Collective ratemaking subsidizes inefficient carriers and allows more efficient carriers to earn higher profits than their operating costs justify or the Commission might, on an individual basis, approve. This method of rate setting does not take into account that some carriers practice greater management efficiency, some have more efficient routes and others are affected by factors that allow them to operate at different costs. Shippers who use the more efficient carriers are paying more to

haul goods than necessary, and consumers as well are ultimately paying more than necessary.

In addition, carriers that are not members of the rate bureau are encouraged by collective ratemaking to increase rates. They can raise rates to slightly below MTRB rates and remain competitive with bureau members. One independent household mover had rates approved which were just under those charged by MTRB members, and reported an operating ratio of 90% earning 4% more revenues than the 94% the Commission determined is fair and reasonable.

Collective price fixing may be in violation of Federal antitrust laws. The Commission allows collective price fixing because Section 58-23-1010 of the 1976 South Carolina Code of Laws allows the Motor Truck Rate Bureau to fix prices. This law states in part:

The Commission may approve joint rates, local rates and rate agreements between two or more motor carriers relating to rates, classifications, allowances and charges agreed to and published by individuals, firms, corporations or the Motor Truck Rate Bureau, Inc. Any such agreements when approved by the Commission shall be deemed not in violation of §39-3-10.

However, Section 39-3-10 of the South Carolina Code of Laws pertaining to trusts and collective ratemaking states in part:

All arrangements, contracts, agreements, trusts or combinations ... between two or more persons as individuals, firms, corporations, syndicates or associations that may lessen or affect in any manner the full and free competition in any tariff, rates, tolls, premium or prices in any branch of trade, business or commerce are declared to be against public policy, unlawful and void.

The State law allowing price fixing was passed after the U.S. Justice Department filed a suit in U.S. District Court for the Northern District of Georgia challenging the legality of intrastate rate bureaus,

similar to South Carolina's, in five southeastern states. In 1979, the Court ruled in favor of the Justice Department; price fixing by these rate bureaus was determined to be illegal. The case was appealed to the Fifth Circuit Court of Appeals which upheld the lower court's decision. This raises the question of whether rate bureaus are lawful in South Carolina.

In a letter to the Audit Council, dated February 1982, the Assistant Attorney General of the United States Justice Department's Antitrust Division stated in part:

Collective ratemaking by motor carriers, whether interstate or intrastate, is without economic justification and is seriously harmful to the efficient operating of the trucking industry. Collective ratemaking tampers with an essential precondition to the efficient operation of the free market: free and open competition. It is a virtual certainty when price fixing occurs that economic waste will result through unnecessarily high prices and inefficient allocation of resources...your review should seriously consider the possibility that collective ratemaking by MTRB, subsequently approved by PSC, violates Section 1 of the Sherman Act. [Emphasis Added]

Florida rate bureaus became subject to State antitrust laws and consequently stopped collectively setting prices effective July 1, 1980. The Federal Motor Carrier Act of 1980 made interstate rate bureaus subject to Federal antitrust laws effective in 1984. Collective ratemaking at the Federal level will no longer be lawful after that date.

In conclusion, by allowing carriers to collectively establish shipping rates, PSC has allowed some carriers to charge more than they need to haul goods in South Carolina. Additionally, some carriers have received increases they probably would not have received if they were not MTRB members. By allowing price fixing, PSC may be unlawfully hindering the full and free competition of motor carriers.

Lack of Directives for Determining Rates

The Public Service Commission has no written guidelines to be used in determining a company's operating ratio. PSC audits certain carriers when they request a rate increase to ensure that only necessary business operating expenses are reported to the Commission to justify a rate increase. PSC regulates and establishes rates for approximately 1,300 intrastate carriers, which, with few exceptions, can charge only the rate approved by PSC. Carriers are prohibited from offering discount rates unless approved by PSC and can be fined for doing so.

Carriers requesting general rate increases submit to PSC financial reports, which include balance sheets, profit and loss statements, the effect of the increase, accountant reports and other financial data. The Commission uses this information in part as a basis to decide if an increase is necessary.

The Transportation Department has developed no guidelines stating which expenses are included/excluded in the carrier's operating ratio. PSC management has not taken the initiative to develop audit guidelines even though, in 1978, the Joint Legislative Study Committee found that PSC auditors had no audit guidelines to follow when conducting financial audits on carriers. Although the Committee recommended PSC correct this deficiency, the agency has not done so.

In a government regulated business which is virtually free from competition, only necessary and reasonable costs should be passed on to the consumers. PSC has the authority to establish guidelines stating allowable motor carrier costs. Section 103-91 of PSC's Rules and Regulations states in part:

The Commission shall make, fix, establish, or allow just and reasonable rates, fares, charges, classifications, and rules for all motor carriers subject to its jurisdiction.

Every rate made, demanded, or received by any motor carrier or by any two or more motor carriers jointly, shall be just and reasonable. [103-192]

In the exercise of its power to prescribe just and reasonable rates...the Commission may give due consideration to the need of such carriers for revenues sufficient to enable them, under economical and efficient management, to provide such service. [103-194]

Without guidelines stating allowable costs, the incentive is for carriers to increase their operating costs and request an increase from PSC to cover increased costs. Carriers can include as operating expenses bonuses and management fees they pay themselves, unlimited salaries, fringe benefits and profit sharing, and other items purchased "for business use." These items increase the cost of operating the business and can be used to justify the need for a rate increase. Less than 0.25% of more than \$500 million in expenses claimed by the few carriers audited were disallowed in 1981. These disallowances were expenses such as fines, college football tickets, personal expenses, undocumented expenses and disallowances made by the carriers' accountants. Also, carriers are subject to inconsistent treatment. Some costs may be allowed by one auditor, whereas, another auditor may disallow the same expense claimed by another carrier. In addition, the Commission cannot ensure that rates charged are fair and equitable and that the public is protected from excessive shipping charges. Without guidelines, the Audit Department primarily determines if revenues and expenditures reported are actually incurred rather than if they are necessary and reasonable.

Insufficient Evaluation of Need for Rate Increases

PSC is granting rate increases to motor carriers without adequately determining their need for a rate increase. The agency has not performed field audits or reviewed financial reports submitted by the carrier for 1,556 (90%) of the carriers receiving general rate increases between 1976 and 1981. Without auditing or reviewing financial records of carriers requesting rate increases, the Commission cannot ensure that only necessary and reasonable rate increases are awarded.

Between 1976 and 1981, PSC awarded 1,720 general increases; 1,556 (90%) of these increases were awarded without any review, audit or analysis of the carriers' financial records. Of the remaining 10% (164) of general increases awarded, audits were performed in 111 cases and financial records, such as accountant reports on file at PSC, were reviewed in the remaining 53 cases (see Table 6).

In addition to general increases from 1976 to 1981, PSC awarded 25 specific rate increases (increases for specific commodities or routes) without determining the need for the increase. Also, PSC has not analyzed or compared costs incurred by similar carriers to determine why costs vary and why some charge higher rates.

TABLE 6
ANALYSIS OF MOTOR CARRIER GENERAL RATE INCREASES
AWARDED FROM 1976 THROUGH 1981

| <u>Calendar Year</u> | <u>Number of Carriers</u> | | <u>Company Annual Reports Reviewed</u> |
|--------------------------|--------------------------------------|---------------------------------------|--|
| | <u>Awarded General Increases</u> | <u>Audited to Verify Expenses</u> | |
| 1976 | 133 | 5 | 10 |
| 1977 | 536 | 20 | 8 |
| 1978 | 304 | 18 | 5 |
| 1979 | 438 | 47 | 21 |
| 1980 | 24 | 5 | 5 |
| 1981 | <u>285</u> | <u>16</u> | <u>4</u> |
| TOTALS | <u>1,720</u> | <u>111</u> | <u>53</u> |

Source: South Carolina Public Service Commission Records.

The Commission has audited few carriers for several reasons. First, PSC allows carriers to collectively request rate increases. Second, because of the large number of carriers requesting increases annually, PSC cannot adequately audit all carriers to decide if requested increases are justified. The Commission has not established guidelines stating which carriers are to be audited and when carriers are to be audited. In addition, PSC has not taken the initiative to review and analyze financial reports filed with the Commission and has not analyzed or compared costs incurred by similar carriers to determine why costs vary and why some charge higher rates.

PSC has adequate Audit Department staff and resources to analyze financial reports of carriers filed with the Commission. Based on such review, recommendations could be made to the Commission concerning increases. However, the Division has not taken the initiative to use these resources.

PSC's Rules and Regulations require the Commission to set only "just and reasonable rates." Section 103-194 states that the Commission may give consideration, when establishing rates, of revenues sufficient to allow an "economically and efficiently" managed carrier to operate. Good management practices require the Commission to thoroughly review all financial information of a carrier to decide the amount of a rate increase necessary.

Without an adequate review of financial information pertaining to all carriers requesting increases, the Commission cannot protect consumers from excessive and unnecessary increases in rates. Without guidelines or procedures for deciding which carriers will be audited and when, the Commission cannot ensure that a representative sample of data is audited for rate increases. Finally, the Commission cannot assess whether price increases it has authorized actually accomplish a primary objective, to compensate carriers for necessary increased costs. As previously stated, the Audit Council found instances of carriers receiving rate increases in 1981 although their operating ratios were as low as 61% (see p. 30).

Oversight of Motor Carriers

Introduction

PSC is responsible for reviewing motor carrier operations to ensure that carriers are operating in compliance with PSC Rules, Regulations and Orders. The Council found problems in PSC's oversight of the industry. First, inadequate monitoring practices have resulted in limited review, no restitution for overcharges to customers, inefficient use of staff time and resources and poor record keeping. Also, PSC has allowed carriers to reduce or discontinue service to communities without having certificates revoked.

Lack of Regular Review

PSC conducts compliance reviews of motor carriers to examine and verify that carriers are charging correct shipping rates and fuel surcharges and are operating within their scope of authority. PSC has not developed a method to ensure that motor carriers are reviewed on a regular basis. The Council examined all Transportation compliance review files from 1976 to 1981 and found that only 39% (518) of the regulated intrastate motor carriers have been reviewed for compliance with PSC regulations during the past five years. In this period, some carriers were reviewed three to four times, while others had no review.

PSC has not taken the initiative to develop procedures for regular review of motor carriers. The agency's goal, as stated in the Five-Year Plan for FY 81-82, is to review 550 carriers for compliance with PSC

Rules and Regulations. As of March 1982, the PSC staff had performed no compliance reviews because the Executive Director chose not to allow them the \$33,704 of travel funds appropriated for these reviews. Only 13% of these funds were expended from July 1981 to February 1982.

Section 58-23-1010 of the 1976 South Carolina Code of Laws gives the Commission the power to "supervise and regulate every motor carrier in this State." In order to carry out its legislative mandate, the PSC staff has authority to examine and copy the books, records, accounts, bills of lading, load sheets, manifests, correspondence or other records of any regulated carrier.

PSC could place a higher priority on carrier rate and scope reviews. For example, during FY 77-78 and FY 78-79, Georgia completed 1,271 and 1,443 compliance audits respectively. South Carolina performed only 1,225 similar audits from 1976-81, an average of only 204 per year. Georgia has a staff of only four auditors, while South Carolina was staffed by three auditors from 1976 to 1978 and by five from 1979 to January 1981.

Without the performance of compliance reviews, PSC has not fulfilled a vital part of its regulatory responsibility. The inadequate review process results in a lack of assurance to the public that motor carriers are charging proper rates and operating in their correct scope of authority. PSC, in essence, has not properly regulated 61% of all South Carolina intrastate motor carriers. In addition, due to the Executive Director's withholding of travel funds for compliance audits since July 1981, PSC auditors who formerly spent approximately 75% of their time performing compliance audits have not been productively occupied. Rate case audits and other workload factors have not increased during this period.

Motor Carriers Overcharge Consumers

PSC has not required that motor carriers refund to customers shipping rate overcharges discovered by PSC auditors. Between 1976 and 1981, PSC auditors found that 35 carriers had charged rates higher than the Commission had approved. However, the Audit Council could find no evidence to show carriers were required to repay the overcharges. Carriers can only charge rates approved by the Commission and cannot charge higher or lower rates than those on file at PSC. Table 7 provides examples of four carriers found overcharging customers between 1976 and 1981. The total amount of overcharges to the public could not be determined because PSC does not keep records of the number of consumers overcharged and has not reviewed 61% of the motor carriers in the past five years.

TABLE 7
SAMPLE OF OVERCHARGES BY MOTOR CARRIERS
FY 76-77 THROUGH FY 80-81

| <u>Carrier</u> | <u>Amount Overcharged</u> | <u>Number of Customers Overcharged</u> | <u>Fines Recommended by PSC</u> | <u>Fined by Magistrate</u> |
|----------------|----------------------------|--|---------------------------------|----------------------------|
| Carrier 1 | \$10 per hr. | unspecified | \$120.00 | 0 |
| Carrier 2 | \$5 per hr. | unspecified | \$ 25.00 | \$25.00 |
| Carrier 3 | \$.50 per order | unspecified | \$ 25.00 | not reported |
| Carrier 4 | \$.45 ¹ per CWT | unspecified | \$ 50.00 | 0 |

¹CWT means hundred weight.

Source: South Carolina Public Service Commission.

PSC auditors issue fines to carriers found overcharging users. These fines range from \$30 to \$100 and are payable to the county magistrate. However, this system does not adequately protect the public because there is no requirement for restitution by the carrier to customers. In addition, the magistrate may drop the fine, which provides no incentive for the carrier to charge correct rates in the future.

PSC has not taken the proper initiative to protect the public from excess shipping rates. PSC officials stated they do not require carriers to repay excess charges because the fines they issue are a deterrent to overcharging. However, carriers could overcharge customers for several years and be fined only \$100 (the maximum fine) when apprehended.

Section 103-200 of PSC's Rules and Regulations requires that carriers charge only the rates approved and ordered by the Commission. Good management and regulatory practices require that the Commission ensure that the public pays only approved, reasonable rates. Any excess charges should be refunded by the trucking company.

Through regulation of motor carriers, PSC is responsible for ensuring that companies do not overcharge customers. By not requiring motor carriers to refund excess charges, PSC has inadequately regulated the motor carrier industry and caused consumers to pay excessive shipping rates.

Uneconomical Review Practices

PSC is using an uneconomical review process in attempting to review motor carrier records without ensuring that the carriers will be available for review. From 1976 to 1981, 31% (374) of the carriers were

not available when PSC staff attempted to examine their records (see Table 8).

PSC Transportation Division practice since 1976 has been to audit a carrier's books and records without prior notice. Although one-third of all attempted audits resulted in no contact, PSC has continued its practice of "surprise audits." PSC auditors stated that the "element of surprise" is an important factor in their auditing process.

TABLE 8
TRANSPORTATION DIVISION COMPLIANCE AUDITS
1976 THROUGH 1981

| <u>Calendar Year</u> | <u>Number¹ of Audit Visits</u> | <u>Visited and No Contact was Made</u> | |
|--------------------------|---|--|----------------|
| | | <u>Number</u> | <u>Percent</u> |
| 1976 | 88 | 1 | 1 |
| 1977 | 100 | 8 | 8 |
| 1978 | 101 | 25 | 25 |
| 1979 | 444 | 160 | 36 |
| 1980 | 476 | 176 | 37 |
| 1981 | 16 | 4 | 25 |
| TOTAL | <u>1,225</u> | <u>374</u> | <u>31%</u> |

¹The number of audits refers to the total number of audits conducted in the given year.

Source: South Carolina Public Service Commission Records.

Efficient management practices require that PSC staff reasonably ensure that contact will be made when travelling to perform compliance

reviews. The information audited - rate schedules, fuel surcharges and operating authorities - does not require the element of surprise for a reliable audit. Adequate results can be achieved without this practice. The Division could use desk audits to perform some review of the industry. The enforcement staff could collect freight bills while inspecting carriers. The audit staff could sample these rates to check that the rates charged are in compliance with the tariffs on file with the Commission. On-site audits should also be used in the review process to verify company records.

By travelling and not making contact with motor carriers, PSC is not adequately monitoring the industry and is wasting dollars assessed on the industry to cover these functions. Records of the five-month sample period (July to November 1980) reviewed by the Council showed that Transportation Division auditors travelled 12,559 miles at a cost of \$2,700 and performed no audits because contact was not made with the carriers. This practice over several years has resulted in unnecessary expenditure of travel funds.

Inadequate Record Keeping and Documentation to Support Audits

Record keeping and documentation of industry review and monitoring by the PSC Transportation Division are inadequate. In reviewing the compliance audit records, the Council found that for 1,225 audits performed from 1976 to 1981, only 144 had some form of documentation to support audit conclusions. This documentation consisted primarily of one or two workpapers. Remaining audits contained no supporting evidence of audit findings.

A specific duty of auditing personnel is to audit and analyze rates and operating authority and to report information on routing, special service and scope of operations. However, PSC has not adequately documented work performed in this area. Auditing personnel have not used standardized, uniform procedures and guidelines to document findings, conclusions and reports issued concerning motor carriers.

Sufficient and relevant evidence and competent documentation is essential to afford a reasonable basis for the auditor's judgments and conclusions regarding the activity and function under review. Good audit management requires written records of the auditor's work to be retained as the basis for audit opinions. Further, the absence of procedures for documentation does not ensure that legal and administrative requirements are met in the event PSC findings are challenged.

Carriers Have not Served their Authorized Areas

Motor carriers can reduce or discontinue service to their authorized areas without having their certificate revoked by PSC. As a result, carriers are not serving areas they committed to serve when granted their certificate by PSC. Because certificates are not always revoked, existing carriers may be protected from competing carriers who wish to obtain authority for the area.

PSC issues certificates to motor carriers only if there is a need for service in an area, and carriers are obligated to serve the areas designated in the certificate. The certificate is good as long as the holder serves areas pursuant to the certificate. The Audit Council found that 17 carriers transacted no business in 1980; however, the Commission took no action to revoke their "dormant" certificates. In addition, some

carriers have authority to serve several communities and haul more than one commodity but are not serving all communities and hauling all commodities promised. PSC has made no attempt to identify carriers serving only portions of areas assigned in their certificate. Therefore, the Audit Council could not document the number of times this occurred.

The Commission has not taken the initiative to identify all carriers who reduce or discontinue service. Neither has the Commission taken steps to revoke all dormant certificates or to modify certificates of carriers not fully serving authorized areas. The Commission has periodically issued a Rule to Show Cause Order against carriers requiring them to comply with filing regulations concerning annual reports, insurance forms or to pay insurance or other fees. If carriers comply with these administrative requirements, they can keep their unused certificates. Although the Joint Legislative Study Committee recommended in 1978 that PSC "conduct a thorough review of its files and initiate procedures to cancel all dormant authority," the Transportation Division has not taken action.

PSC has the power to revoke the certificate of any carrier not adequately serving his area. Section 103-270 of PSC's Rules and Regulations states in part:

The Commission may at any time... suspend, revoke alter or amend any certificate, if it shall be made to appear that the holder... is not furnishing adequate service...

The primary effect of allowing dormant or partially used certificates to remain valid is that the public may not be adequately served and existing carriers' certificates become more valuable (see p. 25). This means that regulation has protected some carriers from competition and has not guaranteed adequate service to the public.

Carrier Insurance Requirements Too Low

PSC Regulations place minimum liability insurance requirements for trucks too low to ensure that the public is adequately protected from property damage or injuries caused by motor carrier accidents. PSC requires that motor carriers maintain liability insurance to ensure that the public is protected in the event of a truck or bus accident. However, the Council found that South Carolina minimum insurance requirements are substantially below Interstate Commerce Commission (ICC) and surrounding states' requirements (see Table 9).

TABLE 9
COMPARISON OF ICC AND OTHER STATES' MINIMUM
INSURANCE REQUIREMENTS FOR FREIGHT AND PASSENGER CARRIERS

| <u>State</u> | <u>Type Carrier</u> | <u>Limit for bodily injuries to or death of one person</u> | <u>Limit for bodily injuries to or death of all persons injured or killed in any one accident</u> | <u>Limit for loss or damage in any one accident to property of other (excluding cargo)</u> |
|--------------|---------------------|--|---|--|
| SC | Passengers | | | |
| | up to 5 | \$ 15,000 | \$ 30,000 | \$ 5,000 |
| | 7 or less | 15,000 | 40,000 | 5,000 |
| | 8 to 12 | 15,000 | 50,000 | 5,000 |
| | 13 to 20 | 15,000 | 70,000 | 5,000 |
| | 21 to 30 | 15,000 | 90,000 | 5,000 |
| | 31 or more | 15,000 | 110,000 | 5,000 |
| | Freight | 25,000 | 100,000 | 10,000 |
| NC | Passengers | | | |
| | 7 or less | \$ 50,000 | \$100,000 | \$50,000 |
| | 8 to 12 | 50,000 | 150,000 | 50,000 |
| | 13 to 20 | 50,000 | 200,000 | 50,000 |
| | 21 to 30 | 50,000 | 250,000 | 50,000 |
| | 31 or more | 50,000 | 300,000 | 50,000 |
| | Freight | 100,000 | 300,000 | 50,000 |
| GA | Passengers | | | |
| | 15 or less | \$100,000 | \$300,000 | \$50,000 |
| | 16 or more | 100,000 | 500,000 | 50,000 |
| | Freight | 100,000 | 300,000 | 50,000 |
| ICC | Passengers | | | |
| | 12 or less | \$100,000 | \$300,000 | \$50,000 |
| | 13 or more | 100,000 | 500,000 | 50,000 |
| | Freight | 100,000 | 500,000 ¹ | 50,000 |

¹Trucks 10,000 pounds or more.

Source: Applicable statutes.

In addition, PSC cargo insurance requirements are too low to ensure adequate property protection. Cargo insurance coverage is for carriers who move household goods, petroleum, and other freight which may be of considerable value. PSC Rules and Regulations require carriers to maintain only \$2,500 of cargo insurance for each vehicle. The ICC requires interstate carriers to maintain at least \$5,000 in cargo coverage.

The Commission has not taken the initiative to update Rules and Regulations concerning insurance requirements. PSC officials stated that in 1976 the Commission attempted to raise minimum requirements. However, the trucking industry opposed the change and PSC did not pursue the matter.

Good management practices require that PSC establish minimum insurance requirements which would adequately protect the public. Section 103-170 of PSC's Rules and Regulations states that motor carriers must have insurance which will "pay any final judgment recovered against such motor carrier for bodily injuries to or death of any person and/or for loss of or damage to property of others resulting from negligent operation." In addition, the Department of Highways and Public Transportation requires carriers domiciled in South Carolina to maintain liability insurance. The Highway Department could assume the responsibility of requiring all trucks to maintain certain insurance requirements if motor carriers were deregulated (see p. 49).

Without adequate minimum insurance requirements, the Commission cannot ensure that the public is financially protected from truck accidents. The public is not assured of recovering hospital costs or financial losses in the event of a major truck accident. In addition, carriers

who move furniture, televisions, electronics and other valuable freight are not required to maintain enough insurance to cover these cargo losses in the event of an accident.

Enforcement of Truck Safety Laws

The Public Service Commission and the South Carolina Department of Highways and Public Transportation (SCDHPT) are separately enforcing truck safety laws. Both agencies inspect certain trucks operating on State highways to determine if they meet South Carolina safety laws (see Table 10). This duplication of effort causes inefficient truck inspections and causes truckers to be stopped twice for a safety inspection.

PSC employs nine safety officers whose primary responsibility is to ensure that trucks are in safe working order, and 31 officers whose primary responsibility is to enforce regulatory laws. Safety officers inspect tires, brakes, brake lines, steering, lights, equipment under the truck, logbooks, and other areas. To ensure that trucks are operating safely, they can issue fines ranging from \$30 to \$100 for violations detected. PSC officials have estimated that approximately two-thirds of all trucks operating in South Carolina are privately owned. Companies who own these trucks use them to haul their own goods and are not for-hire. Privately-owned trucks are not subject to inspections by PSC.

SCDHPT, with 27 specialized officers, also performs safety checks on trucks. SCDHPT Weight Enforcement Division inspects trucks primarily for weight, height, length and width requirements. They also occasionally check tires, lights and brakes to ensure that they are in good working order. Fines levied by SCDHPT range from \$30 to a sliding

scale fine based on pounds overweight. SCDHPT has jurisdiction over all trucks operating in the State. PSC inspects trucks in rest areas, on the side of highways, and in weight stations when SCDHPT officers are not using them. Due to the small number of personnel in each agency, both rarely conduct night inspections.

In addition to safety responsibilities, PSC, SCDHPT and the Department of Health and Environmental Control (DHEC) require certain trucks to keep proof of liability insurance on file to ensure that the public is protected from any damage caused by a motor carrier. The Highway Department requires all trucks licensed in South Carolina to file proof of liability insurance. PSC also requires all "for hire" carriers operating in the State to file proof of liability insurance. Further, PSC requires all intrastate freight carriers to file proof of cargo insurance. All carriers of hazardous waste material must maintain the minimum liability requirements of DHEC.

TABLE 10
EXAMPLES OF STATE AGENCIES'
ENFORCEMENT RESPONSIBILITIES FOR
TRUCK SAFETY LAWS

| <u>Duties</u> | <u>Performed by</u> | | |
|--|---------------------|---------------|-------------|
| | <u>PSC</u> | <u>SCDHPT</u> | <u>DHEC</u> |
| 1. Enforcement of height, weight, length and width laws. | | X | |
| 2. Windshield wipers, lights tires and brakes checks | X | X | |
| 3. "Under the Truck" checks | X | | |
| 4. Jurisdiction over all motor vehicles | | X | |
| 5. Minimum Insurance requirements for certain trucks | X | X | X |
| 6. Licensing of truck drivers | | X | |

Source: Agency Regulations and Policy.

SCDHPT also is responsible for ensuring that truck drivers are able to safely drive trucks. The Highway Department Licensing Section tests drivers' ability to handle and maneuver large trucks.

Present South Carolina laws allow both agencies to perform certain safety checks on trucks operating in the State. The laws also give PSC the authority to inspect only "for hire" trucks while SCDHPT has authority over all trucks.

Good management and efficiency practices require that only one agency perform all necessary safety checks on all trucks in the State

and that inspection procedures be uniform. The Highway Department can better perform this function because it has jurisdiction over all trucks on the highways and is the designated agency for policing State highways.

The 1970 and 1976 Cresap, McCormick and Paget reports, concerning PSC management, recommended transferring motor carrier inspections to the Highway Department. "This transfer would allow officers to be moved to other, more highly paid jobs when they outgrew their jobs as inspectors."

In its 1977 report, the Audit Council also recommended that truck inspections:

...would be carried out more efficiently by a single State agency such as the Highway Department.

By allowing two agencies to inspect and enforce truck safety laws, the public may not be adequately protected from unsafe trucks. PSC, the only agency in South Carolina which inspects logbooks and "under the truck" for faulty brakes, hoses, tires and other features, can only inspect trucks which are "for hire." SCDHPT, the agency which can inspect any truck in the State, does not perform these important safety checks. Also, one agency may inspect a truck and determine it is safe, whereas, the other agency, applying different tests and different qualifications of inspectors, may determine the truck to be unsafe.

The present method is unfair to truckers. One truck can be stopped and inspected twice by the two agencies on the same highway, causing the trucker to lose time and money hauling goods.

By consolidating the responsibilities of the two agencies into the Highway Department, a more efficient method of inspecting trucks could

be obtained. The additional personnel would allow the Highway Department to open more weigh stations on a routine basis and allow for more "surprise" night inspections. This transfer would not require any additional State funds. The transfer of personnel would be funded by registration stamps purchased by "out-of-state" truckers, fines collected from overweight trucks, and PSC's portion of the motor carrier road tax.

Regulation of Railroads

The Public Service Commission maintains economic and safety regulation of all railroads operating within the borders of South Carolina. Eleven companies owning approximately 3,000 miles of railroad are regulated by PSC. To regulate the railroads, the Commission employs three individuals whose primary responsibilities include analyzing rates, tariffs, fuel surcharges, abandonments, rail inspections, accident investigations and other safety areas concerning railroads.

In 1980, Congress passed The Staggers Rail Act. This Act transferred much of PSC's intrastate economic regulatory authority to the Interstate Commerce Commission (ICC). As a result, PSC can no longer grant intrastate railroads general rate increases, fuel adjustment surcharges, or inflation-based increases. To become certified to regulate rates, PSC must submit standards for regulating the industry which are consistent with Federal requirements and receive ICC approval of these standards. PSC has requested ICC certification and has been granted provisional certification. As of March 31, 1982, the agency was in the process of obtaining permanent ICC certification to regulate certain intrastate rail rates. The Staggers Rail Act does not affect PSC's

safety regulation of the railroads. The State regulatory agency still maintains jurisdiction over safety issues pertaining to intrastate railroads.

PSC has the option of not regulating intrastate railroad rates. If the Commission wishes, the ICC will assume responsibility for economic intrastate regulation of South Carolina railroads. In addition, if South Carolina wants total economic deregulation of the railroad industry and so notifies the ICC, the ICC would not step in to regulate intrastate rates. However, if South Carolina requests ICC certification to regulate rates and is denied, the ICC is required by law to regulate South Carolina rates.

Section 13 of The Interstate Commerce Commission Act provides that the ICC may overrule any decision by a state regulatory body if it creates an undue burden on interstate commerce. PSC officials stated that because of this provision, the Commission rarely denies a rate increase to the railroads.

Under The Staggers Rail Act, and Section 13 of the ICC Act, it appears that the ICC largely controls intrastate economic regulation of the railroads, either directly or through its authority to overrule states. The need for PSC regulation of rail rates is questionable.

As of January 25, 1982, 14 states have not sought ICC certification to regulate railroads and will probably forego all jurisdiction to regulate intrastate rail transportation. The ICC will not impose any intrastate regulation in these states, which include North Carolina, Mississippi, Maine, Rhode Island, Alaska, Arizona, California, Connecticut, Delaware, Hawaii, Massachusetts, Nevada, South Dakota and Vermont.

The Staggers Rail Act is being challenged in Federal Court by the State of Texas. Texas contends, in part, that the Federal government has no authority over intrastate ratemaking in the railroad industry.

Deregulation: Federal and State Trends

Introduction

Few changes occurred in the regulation of motor carriers at the Federal level between the 1930's and 1970's. In the 1970's, studies by economists concluded that economic regulation of the motor carrier industry was unnecessary.

Various congressional committees held hearings in the 1970's concerning deregulation. On the basis of testimony in hearings, Congress passed The Federal Motor Carrier Act of 1980. The Act, although it did not result in total deregulation, significantly reduced Federal regulation of motor carriers. The Act provided for four major changes: easier entry into the business; greater freedom to establish rates; eased operating restrictions; and interstate rate bureaus become subject to Federal antitrust laws.

Twelve other states have recently eased economic regulation of motor carriers. These states are California, Colorado, Idaho, Massachusetts, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Oregon, South Dakota, and Wyoming. States that are studying regulatory reform include Oklahoma, Pennsylvania, Texas, Utah, Alaska, Iowa, and Michigan. Wisconsin and Kansas have recently conducted reviews of their intrastate trucking regulations. Both states recommended complete economic deregulation of their motor carrier industry and are in the process of introducing legislation to deregulate. The following summary highlights states that do not regulate or are moving toward economic deregulation of motor carriers.

Florida

Florida trucking regulations terminated July 1, 1980 under a Sunset provision in which the legislature voted not to continue economic regulation. Since economic deregulation has taken effect, rates for some truckload shipments have been reduced as much as 54%, while some less than truckload rates increased slightly. Service in Florida has not been reduced as a result of deregulation, as opponents of deregulation contended. According to one study, no small community has been denied service in Florida, and many small communities experienced increased service. Two bus services increased total weekly schedules by 8% and 7.3% after economic deregulation. A study performed by the ICC on Florida's deregulation stated that the results are favorable. "Users of bus and truck service are enjoying increased levels of service and service/price options; carriers are taking advantage of new markets and achieving more efficient fleet utilization."

Arizona

Arizona voters, by statewide referendum in November 1980, deregulated economic aspects of the motor carrier industry. Actual deregulation will not occur, however, until July 1, 1982. The 18 month transition period will allow carriers opportunity to prepare for market determination of rates and routes. Motor carriers will still be required to meet safety and financial responsibility tests. Jurisdiction of these areas will be moved to the Arizona Department of Transportation.

Maine

The Maine Legislature made economic deregulation of intrastate trucking effective January 1, 1982. The purpose of deregulation was to provide a safe, reliable and efficient motor carrier system by creating greater entry into the industry and more competition within the "for-hire" industry. Safety requirements were retained and are administered by the Bureau of State Police. In addition, carriers are required to have proper insurance coverage.

Delaware

Delaware is without economic regulation of intrastate motor carriers. There has been no pressure to regulate the industry from shippers, receivers or State government officials. Entry and exit into the business is free. Rates and service levels are governed only by market forces. A recent survey of 204 carrier firms found that 86% favored the status quo, and only 4% desired more regulation. Rates and service levels are better than or equal to those found in comparable regulated markets.

Maryland

Intrastate shipments of household goods are not subject to regulations in Maryland. A survey performed on rates revealed that unregulated intrastate shipment rates ranged from 27% to 47% below the rates on regulated industrial interstate shipments of comparable length.

New Jersey

New Jersey has not practiced economic regulation of intrastate motor carriers (except solid waste, household goods and bulk commodity

haulers). Any individual can enter the business and rates are subject only to competitive market forces and the State's antitrust laws. Shippers reported that they are able to obtain rates 8.5% to 13.2% below comparable regulated interstate rates. In some instances, rates were 60% below comparative interstate rates. In addition, nearly all (97%) of the shippers felt intrastate trucking service was excellent.

Economic Deregulation: Major Issues

Economic regulation of motor carriers was initially justified because judicial and legislative regulation could not adapt quickly to advances in a dynamic industry and a rapidly growing economy. Because the public's interest was affected and laws to protect both the consumer and the industry were evolving, there was a need for oversight and control to ensure fair trade practices and adequate service. Economic, legal and administrative factors have now led to revised attitudes regarding the structure and form of regulation.

The trucking industry contends that three primary problems would occur without trucking regulation: loss of service to small communities, instability in the industry and predatory pricing. The Audit Council compared each argument with Federal and State studies on the subject and with the experience of unregulated or recently deregulated states.

Loss of Service to Small Communities

Proponents of regulation contend that without regulation, small communities would lose trucking service. They contend that regulations force motor carriers to serve unprofitable small communities. Losses are recouped from more profitable routes.

A summary of 15 studies prepared for the U. S. Department of Transportation on rural communities in the U. S. found that current Interstate Commerce Commission regulation is not an important factor in guaranteeing small town service because carriers are still able to avoid serving them. The studies note that carriers are serving small towns because they are profitable, not because they are obligated to do so, and that deregulation would benefit small towns, not hurt them.

ICC regulated carriers, like South Carolina regulated carriers, are obligated to serve all points listed on their certificate. However, despite their obligation, carriers were apparently serving only towns that were profitable. The studies found, however, that the United Parcel Service (UPS), an ICC regulated major provider of small town service, does serve small communities because it is profitable and not because of their ICC obligation.

The U.S. Secretary of Transportation informed a congressional subcommittee that small town service can be improved by reforms. He stated that easing of route, commodity and entry restrictions are among the reforms that can help improve truck service to small and rural communities.

Studies performed on small communities in Florida after deregulation show that small communities did not lose service and, in some instances, gained new service. A survey performed on small community shippers in Florida after deregulation revealed that 65% prefer deregulation and the remaining 35% had no preference. All shippers who reported losing any service reported receiving new service from a greater number of carriers. There is little indication that carriers are selectively refusing to pick up freight in small towns.

Regulated carriers do not deliver a high percentage of goods to small towns. A 1980 Wisconsin study found that regulated carriers provide less than 20% of all small towns' service. A 1980 study performed for the Iowa Department of Transportation on Iowa small communities concluded that carriers with small town authority were not providing that service. The communities placed a greater reliance on private, parcel and contract carriers. New Jersey has never regulated

the majority of intrastate motor carriers. Shippers, including those in small towns, favor the deregulated industry and stated service is excellent.

The South Carolina Public Service Commission, as of March 1, 1982, has not received any complaints from shippers concerning loss of service and has never revoked a carrier's certificate for not serving a small community. The Audit Council, however, found instances where carriers discontinued service to small communities without approval of PSC. Regulation, therefore, has not forced carriers to serve small towns in the State.

Instability in the Industry

Proponents of regulation contend that without regulation, the trucking industry would be flooded with new carriers. New competition, they contend, would have a destabilizing influence on the industry by allowing service to deteriorate. Also, they state that wide fluctuations in rates, and an excess of truck capacity over demand would result. Shippers would not know from day to day which carriers would be available and at what rate.

In the mid 1950's, the ICC exempted several agricultural products from regulation. Studies conducted by the U. S. Department of Agriculture on exempt carriers found that rates dropped and remained stable, except for seasonal influences. At the same time, service improved dramatically, becoming more flexible and responsive to shippers' needs. An ICC study also reported that carriers had steady rate structures and there is no evidence that rate charges are less predictable than before deregulation.

After Florida moved to economic deregulation in July 1980, approximately 100 new carriers entered the industry. Studies have shown that service has improved rather than deteriorated, rates have remained stable or dropped in some instances, and there has been no significant increase in bankruptcies. A study prepared by the University of Kentucky reported:

One striking finding has been the ease and smoothness with which Florida shifted to deregulation. For the most part, the transportation system is functioning in an orderly manner, with no discernable trend toward less efficient or slower service.

Florida has not in recent years regulated carriers of agricultural products. Because they were not regulated, carriers could charge farmers whatever rate they wished. However, rates charged farmers were less than rates charged for regulated goods, and farmers stated that the unregulated segment was efficient and thorough. They also indicated they were satisfied with the nonregulated market.

New Jersey has never regulated freight or most specialized carriers. A recent study by the University of Pennsylvania found that intrastate carriers in that State were generally small, profitable and had been in business an average of 18 years. Approximately 90% of the State's shippers favored deregulation, and 97% said service was excellent.

Predatory Pricing

Proponents of regulation argue that larger motor carriers could hold prices artificially low and drive small carriers out of business. After this, they argue, large carriers could raise rates at will.

Opponents of regulation argue that full and free entry would stimulate competition and reduce present concentration. New firms could offer service at competitive rates rather than one rate set by PSC.

Experience in exempt trucking confirms the absence of predatory behavior in an unregulated environment. There are thousands of exempt carriers; although rates tend to be stable, they are high enough to attract people into the industry, and bankruptcy rates are low.

Existing Federal and State laws can provide the protection needed against predatory pricing and unfair trade practices. Predatory pricing practices by large trucking companies with the intention of destroying competition can be controlled by Section 39-3-150 of the 1976 South Carolina Code of Laws, which deals with trusts.

In Florida, there is no evidence to suggest that larger firms are artificially holding prices low to drive weaker firms out of business. Service has improved and rates have been lowered or remained stable. In New Jersey, where most of the trucking industry has never been regulated, firms are generally small, long lived, and profitable. They are not large and monopolistic as proponents of regulations contend they would be. In addition, larger firms have not made attempts to drive smaller firms out of business.

The U. S. Justice Department also denies that motor carriers would lower their rates until most competitors are out of business. To assume this would be to accept that the trucking industry has characteristics of a natural monopoly. Natural monopolies such as fixed utilities, have unusual economic characteristics including a high ratio of fixed to variable costs. The ratio of fixed to variable costs, however,

is low in the trucking industry, requiring relatively little capital investment. There is little reason to believe the trucking industry is inclined toward destructive competitive practices. These factors make predatory pricing extremely unlikely because such behavior makes sense only where entry barriers are high enough to assure a surviving firm some degree of long-term monopoly power. Because capital costs in the trucking industry are relatively low, it would be relatively easy for an individual to purchase trucking equipment and compete with a trucking firm trying to monopolize the industry.

Conclusion

Based on the findings and a review of State and Federal studies on deregulation, the Audit Council concludes that there is no need to regulate the operation of motor carriers in South Carolina except with regard to the safety of their equipment. Federal and State studies show that trucking in deregulated states is stable, competitive and providing service to small communities.

The Council identified significant, unnecessary costs associated with regulation. Economic deregulation would allow increased competition, and would not produce an unstable industry. It would also allow greater operating efficiencies, lower administrative and entry costs, and would result in a savings to the consumer and shipper.

The Council concludes that deregulation would not be harmful to the public or carriers. Rather, it would require carriers to operate efficiently and be responsive to the requirements of shippers and consumers. Because economic restrictions seriously inflate the cost of shipping goods in South Carolina, the cost of regulation outweighs any benefits the public may receive. Other regulatory programs in place, such as the State's antitrust laws, will operate to protect the public from unfair pricing and monopolistic practices.

The Transportation Division staff consists of 68 clerical and professional employees who administer and enforce safety and economic regulation of motor carriers and railroads. These positions are funded with revenues from truck license tags sold to intrastate truckers, PSC's portion of the motor carrier road tax, registration of interstate and exempt trucks, and assessments of the railroads. The balance of licensing and road tax revenues, which remains after costs for administration of economic

regulation of the truckers are paid, is allocated to cities and towns in the State.

By discontinuing economic regulation of truckers, intrastate truckers could save approximately \$1 million annually, the current assessment for the cost of administering the regulatory program. Truckers would save this amount by no longer being required to purchase PSC license tags.

The Council recommends that the following method be considered for distributing staff under economic deregulation of motor carriers. Forty-two positions could be transferred to the Highway Department to aid in policing unsafe and overweight truck operations. This would allow safety regulations to be more vigorously and efficiently enforced by adding more officers to the Truck Weight Enforcement Division of the Highway Department. The public would be better protected from overweight and unsafe trucks at no additional cost to the State. These positions would be funded with registration stamp revenues, overweight truck fines, and part of the motor carrier road tax.

Five positions, responsible for railroad regulation, would be continued and funded with railroad assessments until a decision is made by the courts on the Staggers Rail Act. The remaining 21 positions in the Division could be discontinued.

RECOMMENDATIONS

THE GENERAL ASSEMBLY SHOULD CONSIDER
REPEALING THE PORTION OF SECTION 58-23-1010
OF THE 1976 SOUTH CAROLINA CODE OF LAWS
WHICH ALLOWS THE MOTOR TRUCK RATE BUREAU
TO FIX PRICES.

THE GENERAL ASSEMBLY SHOULD CONSIDER THE COMPLETE ECONOMIC DEREGULATION OF INTRA-STATE MOTOR CARRIERS IN ORDER TO PROMOTE FREE COMPETITION IN THE INDUSTRY.

- (1) THE MOTOR CARRIER ENFORCEMENT, SAFETY AND REGISTRATION DEPARTMENT POSITIONS WITHIN THE PUBLIC SERVICE COMMISSION SHOULD BE TRANSFERRED TO THE TRUCK WEIGHT ENFORCEMENT DIVISION OF THE DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION. THESE POSITIONS SHOULD BE FUNDED WITH REVENUES FROM OVER-WEIGHT TRUCK FINES, REGISTRATION STAMPS, AND PSC'S PORTION OF THE MOTOR CARRIER ROAD TAX.

REVENUES REMAINING AFTER PAYING ADMINISTRATIVE COSTS SHOULD BE ALLOCATED TO CITIES AND TOWNS IN SOUTH CAROLINA, BASED ON THE CURRENT FORMULA.

THE PUBLIC SERVICE COMMISSION'S PORTION OF THE MOTOR CARRIER ROAD TAX REVENUES

SHOULD NO LONGER BE ALLOCATED TO THE AGENCY, BUT SHOULD BE ALLOCATED TO THE HIGHWAY DEPARTMENT AND DESIGNATED FOR THE WEIGHT ENFORCEMENT DIVISION.

MOTOR CARRIERS SHOULD NO LONGER BE REQUIRED TO PURCHASE PUBLIC SERVICE COMMISSION LICENSE TAGS.

THE DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION SHOULD BE GRANTED ALL SAFETY INSPECTION AUTHORITY PSC CURRENTLY HOLDS.

THE DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION SHOULD ASSUME RESPONSIBILITY OF ENSURING THAT ALL TRUCKS REGISTERED TO OPERATE IN SOUTH CAROLINA HAVE LIABILITY INSURANCE AND THOSE THAT ONLY OPERATE IN SOUTH CAROLINA HAVE CARGO INSURANCE.

- (2) THE HIGHWAY DEPARTMENT SHOULD CONSIDER ADOPTING INTERSTATE COMMERCE COMMISSION TRUCK MINIMUM INSURANCE REQUIREMENTS AS THE MINIMUM IN SOUTH CAROLINA.

IF THE GENERAL ASSEMBLY DOES NOT CHOOSE TO ELIMINATE ECONOMIC REGULATION OF MOTOR CARRIERS, THE GENERAL ASSEMBLY AND PSC SHOULD CONSIDER IMPLEMENTING THE FOLLOWING REGULATORY CHANGES:

- (1) PSC SHOULD CONSIDER EASING ENTRY INTO THE MOTOR CARRIER INDUSTRY BY CONSIDERING AN APPLICANT'S FITNESS TO PROVIDE SERVICE AND BY PLACING THE "BURDEN OF PROOF" OF PUBLIC CONVENIENCE AND NECESSITY ON THE PROTESTANT, AS DOES THE INTERSTATE COMMERCE COMMISSION.
- (2) PSC SHOULD EASE RESTRICTIONS WHICH CAUSE INEFFICIENT OPERATIONS OF MOTOR CARRIERS. REGULATIONS THAT IMPOSE CERTIFICATE OPERATING RESTRICTIONS SHOULD BE MODIFIED TO ALLOW THE BROADENING OF COMMODITIES AUTHORIZED; TO AUTHORIZE SERVICE TO INTERMEDIATE POINTS; TO PROVIDE ROUND-TRIP AUTHORITY; TO ELIMINATE NARROW TERRITORIAL LIMITATIONS; AND TO ELIMINATE OTHER UNREASONABLE RESTRICTIONS WASTEFUL OF FUEL, INEFFICIENT OR CONTRARY TO THE PUBLIC INTEREST.

- (3) PSC SHOULD NOT ALLOW THE SALE, LEASE, OR TRANSFER OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR MORE THAN ORIGINAL COSTS OF OBTAINING IT (COSTS OF LEGAL FEES AND TRAVEL TO COLUMBIA FOR THE PURPOSE OF OBTAINING A CERTIFICATE, ETC.).
- (4) PSC SHOULD SET INDIVIDUAL MOTOR CARRIER RATES BASED ON DEFINED REASONABLE COSTS. THE GUIDELINES SHOULD RESTRICT EXCESSIVE SALARIES, FRINGE BENEFITS BONUSES AND UNNECESSARY BUSINESS COSTS. CARRIERS SHOULD BE ALLOWED TO CHARGE "ZONE RATES," OR RATES WHICH CAN VARY WITHIN A ZONE OF MINIMUM AND MAXIMUM RATES.
- (5) PSC SHOULD ADOPT SPECIFIC GUIDELINES FOR RATE INCREASES STATING WHEN CARRIERS WILL BE AUDITED, WHICH CARRIERS WILL BE AUDITED, AND AUDIT GUIDELINES TO BE UTILIZED BY THE STAFF WHEN AUDITS ARE PERFORMED.
- (a) PSC SHOULD REQUIRE CARRIERS TO REPORT SEPARATELY INTRASTATE AND INTERSTATE REVENUES.

(b) PSC SHOULD PERIODICALLY ANALYZE AND EVALUATE EXPENSES AND REVENUES OF SIMILAR CARRIERS FROM ANNUAL REPORTS ON FILE AND DETERMINE REASONS FOR THE VARIANCES. IF ANY CARRIER IS DETERMINED TO BE INEFFICIENT, THIS INFORMATION SHOULD BE PRESENTED TO THE COMMISSION WHEN A RATE INCREASE IS REQUESTED BY THAT CARRIER.

(6) THE TRANSPORTATION DIVISION SHOULD DEVELOP SYSTEMATIC PROCEDURES FOR REVIEWING MOTOR CARRIERS' COMPLIANCE WITH PSC RULES AND REGULATIONS. A PROCESS SHOULD BE ESTABLISHED TO MONITOR CORRECTIVE STEPS TAKEN BY THE MOTOR CARRIERS.

(a) THE DIVISION SHOULD ASSIGN ONE STAFF PERSON TO AUDIT SAMPLE FREIGHT BILLS OF MOTOR FREIGHT CARRIERS TO ENSURE THAT THE RATES CHARGED ARE IN COMPLIANCE WITH THE TARIFFS APPROVED BY THE COMMISSION. THE SAMPLE RATES SHOULD BE COLLECTED

FROM CARRIER OFFICES BY THE ENFORCEMENT STAFF. PSC SHOULD REQUIRE CARRIERS TO REPAY OVERCHARGES TO CONSUMERS.

(b) THE TRANSPORTATION DIVISION SHOULD EVALUATE THE BENEFITS OF "SURPRISE AUDITS" IN LIGHT OF THE COSTS.

THE DIVISION SHOULD DEVELOP WRITTEN POLICIES COVERING TRAVEL AND FOLLOW-UP PROCEDURES.

(c) PROCEDURES SHOULD BE ADOPTED TO ENSURE COLLECTION, SAFE CUSTODY AND RETENTION OF WORKING PAPERS TO SATISFY LEGAL AND ADMINISTRATIVE REQUIREMENTS.

(7) PSC SHOULD INITIATE PROCEDURES TO CANCEL DORMANT CERTIFICATES AND MODIFY PARTIALLY USED CERTIFICATES.

(8) THE GENERAL ASSEMBLY SHOULD CONSIDER TRANSFERRING THE TRUCK SAFETY INSPECTION FUNCTIONS FROM THE PUBLIC SERVICE COMMISSION TO THE DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION. MINIMUM

TRUCK INSURANCE REQUIREMENTS SHOULD
BE BASED ON INTERSTATE COMMERCE COM-
MISSION MINIMUM REQUIREMENTS.

- (9) AFTER THE COURTS HAVE CONSIDERED THE
STAGGERS RAIL ACT OF 1980 AND HAVE
DECIDED WHICH AREAS OF ECONOMIC REGULA-
TIONS THE STATES CAN CONTROL, THE
GENERAL ASSEMBLY SHOULD DECIDE IF THE
PUBLIC SERVICE COMMISSION SHOULD MAINTAIN
ECONOMIC RAILROAD REGULATION, ALLOW
THE ICC COMPLETE REGULATION, OR DEREGU-
LATE THE INDUSTRY.

CHAPTER III
REGULATION OF UTILITIES

Introduction

Regulation of public utilities is granted to the Public Service Commission (PSC) by Section 58-3-140 of the South Carolina Code, which states:

The Public Service Commission is hereby vested with power and jurisdiction to supervise and regulate the rates and service of every public utility in this State and to fix just and reasonable standards, classifications, regulations, practices and measurements of service to be furnished, imposed or observed and followed by every public utility in this State.

The term "public utility" refers to suppliers of electricity, natural gas firms, telephone, telegraph and radio common carriers (two-way radios), as well as water and wastewater operations. Municipalities are not regulated by PSC except for gas safety regulation of some municipalities or authorities.

The scope of regulation includes the determination of total revenue requirements and individual rates as well as the determination of entry, exit, and territorial market limits. In order to accomplish these tasks, the Commission, among other things, prescribes uniform accounting systems and practices, performs accounting audits and provides regulation and oversight on both quantity and quality of services rendered. Federal legislation, in 1978, brought dominant Federal influences into the energy field.

The Public Utility Regulatory Policy Act (PURPA) has established new Federal procedures for electric ratemaking which involve both policy and design. PSC held rulemaking hearings on these issues and

has modified existing State regulations pertaining to cutoff of power and customer billing. Also, through a Federal grant, the Commission spent \$200,000 from 1978 to 1980 to develop computer models which would be useful in ratemaking.

The Natural Gas Policy Act laid the groundwork to provide maximum price controls for both interstate and intrastate sales of natural gas. It also provides for economic deregulation of new gas and certain intrastate gas as of 1985.

In the telephone service field, competition has been stimulated on behalf of the consumer by means of invoking antitrust legislation, relaxing constraints applicable to terminal equipment and by certification of new, independent bulk service carriers. By 1983 all new equipment tariffs will be deregulated.

Other recent regulatory developments center around conservation and environmental standards such as time-of-day or peak-load pricing, lifeline rates, nuclear plant construction and joint ownership of facilities by private and public utilities.

Currently, PSC regulates six electric utilities, six gas utilities, 46 telecommunication utilities, and 153 water and wastewater utilities in South Carolina. Table 11 shows operating revenues and customers for each type of utility regulated by the Commission.

TABLE 11
OPERATING REVENUES AND CUSTOMERS FOR
SOUTH CAROLINA INTRASTATE PRIVATELY-OWNED UTILITIES
YEAR-ENDED DECEMBER 31, 1980¹

| <u>Utility</u> | <u>Operating Revenues</u> | <u>Total Customers</u> |
|-------------------------------|---------------------------|------------------------|
| Electric | \$1,157,234,000 | \$ 854,694 |
| Gas | 348,343,000 | 233,229 |
| Telecommunications | 662,062,000 | 1,059,661 |
| Water/Wastewater ² | 8,101,285 | 52,253 |
| TOTAL | <u>\$2,175,740,285</u> | <u>\$2,199,837</u> |

¹Does not include municipal utilities. Source: National Association of Regulatory Commissioners.

²This is 100% of operating revenues but only 67% of utilities reporting customer number for year ending December 31, 1981. Source: Public Service Commission.

Utility Rates

Rates in the United States and South Carolina have climbed in the past five years. Utility general rate increases granted by PSC for major investor-owned utilities in South Carolina since 1975 totaled more than \$.5 billion as shown in Table 12.

TABLE 12
MAJOR INVESTOR-OWNED UTILITIES' RATE INCREASES
1975 TO 1982

| <u>Electric Utilities</u> | <u>Amount Requested</u> | <u>Amount Granted</u> | <u>% of Requests Granted</u> |
|-----------------------------------|-------------------------|-----------------------|------------------------------|
| Carolina Power & Light | \$ 79,161,428 | \$ 60,459,985 | 76% |
| Duke Power | 238,423,000 | 166,323,000 | 70 |
| S.C. Electric & Gas | 184,717,807 | 145,051,955 | 79 |
| <u>Telephone Utilities</u> | | | |
| Southern Bell | 278,421,990 | 136,337,015 | 49 |
| General Electric | 10,116,064 | 5,896,123 | 58 |
| United Telephone | 9,487,086 | 5,447,338 | 57 |
| <u>Gas Utilities</u> | | | |
| Piedmont Natural | 5,986,582 | 4,393,627 | 73 |
| S.C. Electric & Gas | 7,800,523 | 6,425,154 | 82 |
| Carolina Pipeline | 4,326,655 | 3,164,415 | 73 |
| Carolina Natural | 1,958,747 | 1,583,662 | 81 |
| Peoples Natural | 770,946 | 649,730 | 84 |
| <u>Water/Wastewater Utilities</u> | | | |
| Carolina Water Service | 1,202,673 | 705,519 | 59 |
| Heater Utilities | 257,175 | 198,004 | 77 |
| TOTAL | \$822,630,676 | \$536,635,527 | 65% |

Source: South Carolina Public Service Commission, April 1982.

Rate increases have affected all consumers. The following graphs, tables, and discussion show the impact that these increases have had on average monthly residential bills. Water and wastewater rates are not included because of the diverse rate schedules used in the industry. The lack of uniform rate schedules for the 153 water and wastewater utilities in the State did not allow for comparisons between South Carolina and other states.

Electric Rates

The following two graphs provide a comparison of average monthly residential rates for South Carolina, the region and the United States. Graph 2 is a detailed breakdown of the South Carolina average monthly bills illustrated in Graph 1.

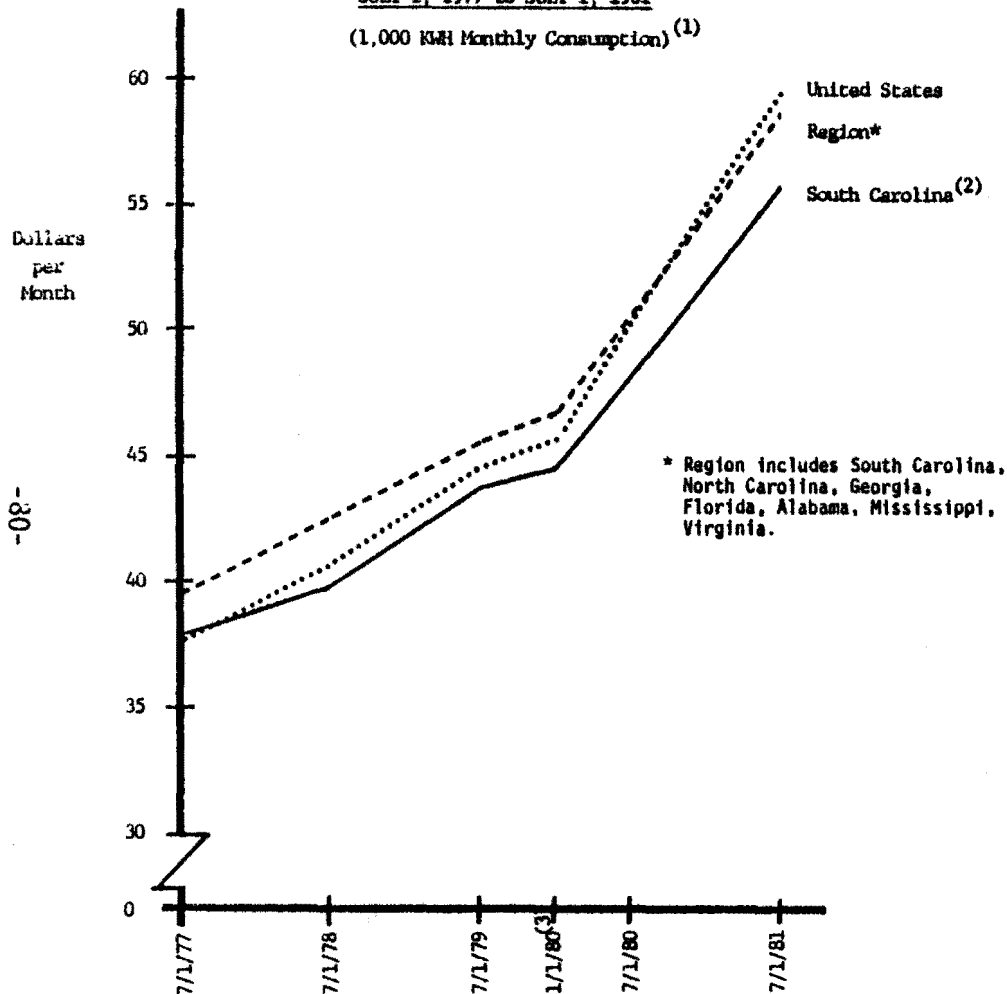
The rates shown are residential rates for investor-owned utilities (including rates under bond, if applicable) in effect at the dates indicated. As noted on the graphs, these figures were obtained from publications of the Edison Electric Institute (EEI), which is an association of electric companies. Typical Electric Bills, published annually by the U.S. Department of Energy, includes information regarding utilities that are not investor-owned and, therefore, was not used. PSC personnel use EEI figures when making bill comparisons for the Commissioners.

The percentage increases in residential, commercial and industrial electric bills from 1977 to 1981 are shown in Table 13.

GRAPH 1

COMPARISON OF AVERAGE MONTHLY RESIDENTIAL ELECTRIC BILLS
FOR INVESTOR-OWNED UTILITIES IN THE UNITED STATES

JULY 1, 1977 to JULY 1, 1981
(1,000 KWH Monthly Consumption) (1)



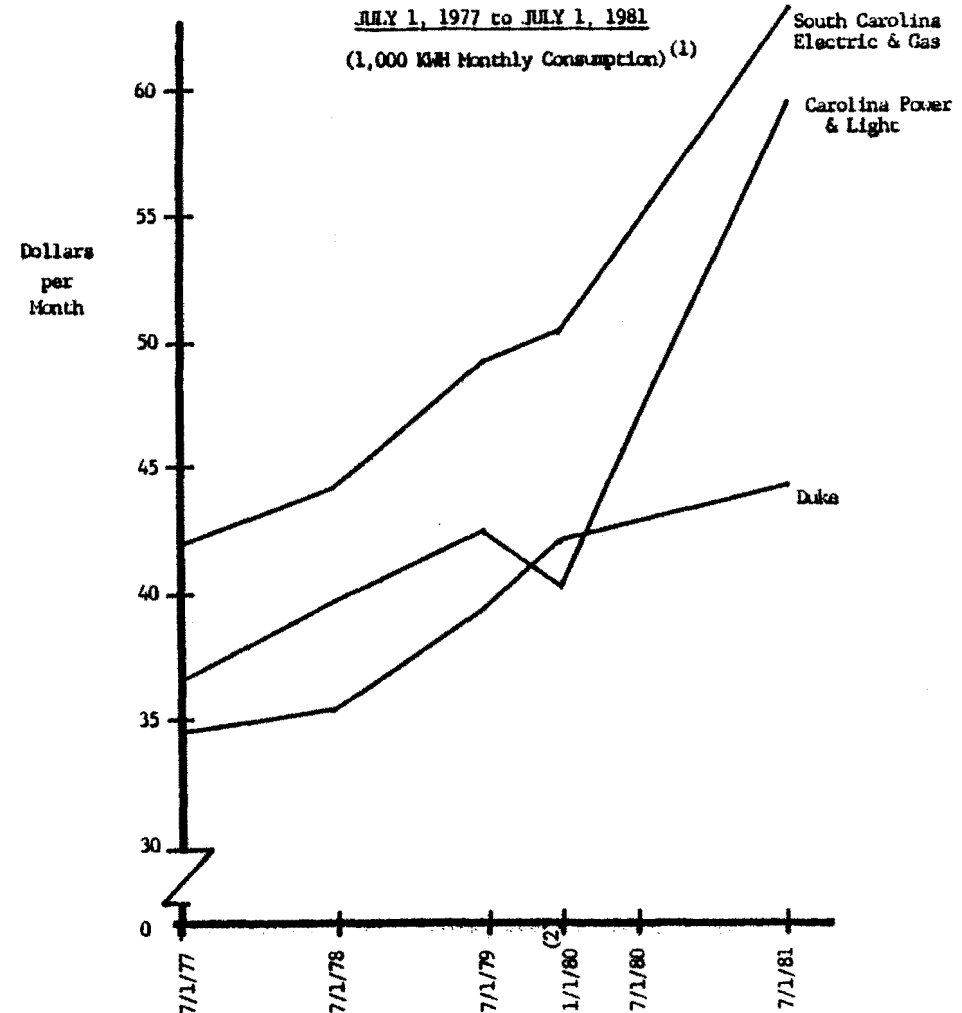
- (1) Average monthly residential consumption in South Carolina as of July 1, 1981 was approximately 1,065 KWHs. Bill amounts were calculated for residential service with electric water heating. See Appendix D.
(2) For a detailed breakdown of the South Carolina average, see Graph 2.
(3) Data for July 1, 1980 was not available.

Source: Edison Electric Institute.

GRAPH 2

COMPARISON OF AVERAGE MONTHLY RESIDENTIAL ELECTRIC BILLS
FOR MAJOR INVESTOR-OWNED UTILITIES IN SOUTH CAROLINA

JULY 1, 1977 to JULY 1, 1981
(1,000 KWH Monthly Consumption) (1)



- (1) Bill amounts were calculated for residential service with electric water heating. See Appendix E.
(2) Data for July 1, 1980 was not available.

Source: Edison Electric Institute.

TABLE 13
PERCENTAGE INCREASE IN AVERAGE MONTHLY ELECTRIC BILLS
JULY 1, 1977 TO JULY 1, 1981

| | <u>Residential</u> ¹ | <u>Commercial</u> | | <u>Industrial</u> | |
|-----------------------------|---------------------------------|---------------------------|---------------------------|---------------------------|---------------------------|
| | | <u>Small</u> ² | <u>Large</u> ³ | <u>Small</u> ⁴ | <u>Large</u> ⁵ |
| Carolina Power and Light | 62% | 45% | 69% | 68% | 70% |
| Duke Power | 28% | 28% | 40% | 40% | 48% |
| S. C. Electric and Gas | 49% | 19% | 72% | 52% | 58% |
| SC-Average | 47% | 30% | 61% | 53% | 59% |
| Region-Average ⁶ | 48% | 34% | 51% | 51% | 57% |
| US-Average | 59% | 43% | 60% | 62% | 69% |

¹1,000 KILOWATT-HOUR (KWH) consumption; residence service with electric water heating.

²12 KILOWATT (KW) demand/1,500 KWH consumption.

³500 KW demand/150,000 KWH consumption.

⁴500 KW demand/200 MEGAWATT (MW) consumption.

⁵5,000 KW demand/2,500 MW consumption.

⁶Region includes South Carolina, North Carolina, Georgia, Florida, Alabama, Mississippi, Virginia.

Source: Edison Electric Institute Data.

Gas

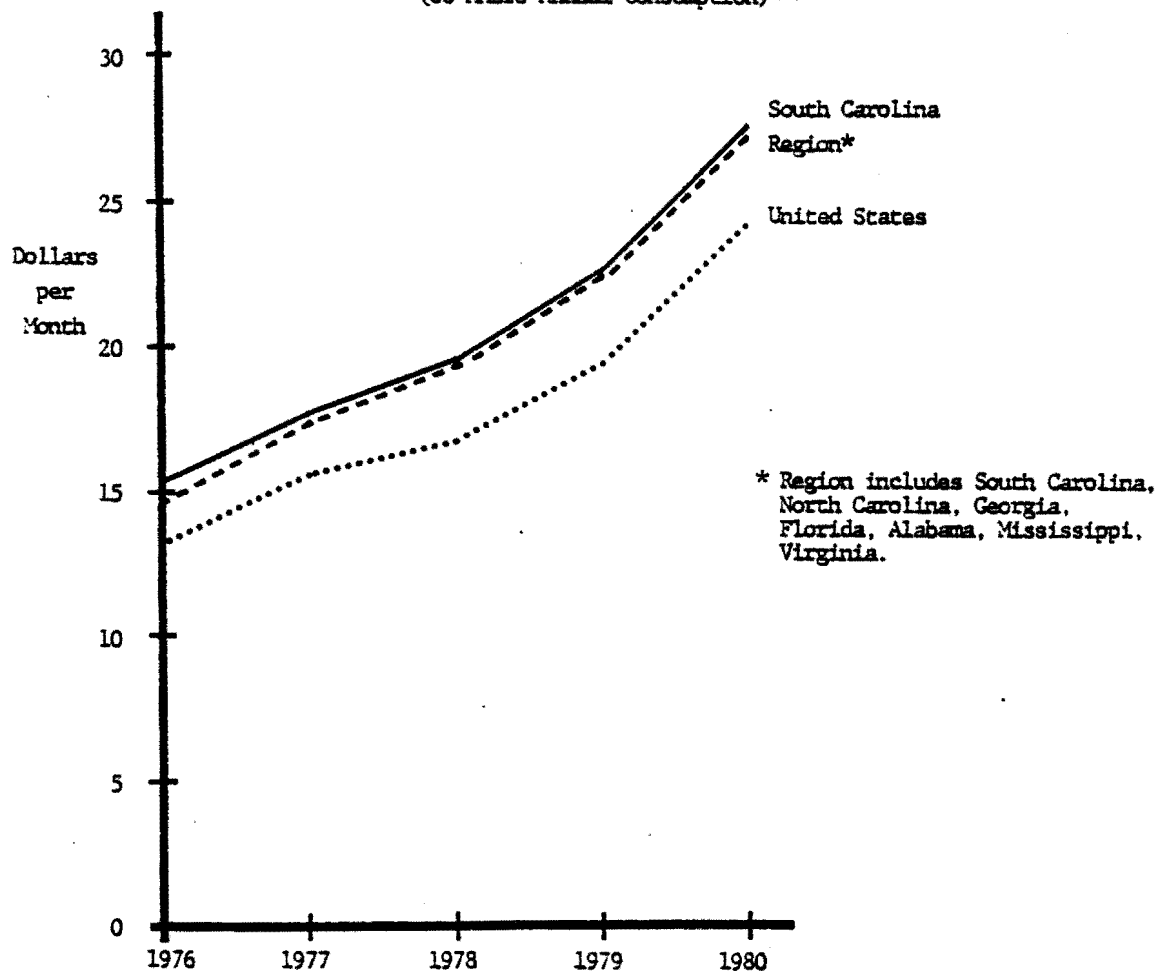
The gas bills in Graph 3 were calculated using the average residential gas prices in effect for the years shown. These figures were obtained from publications of the American Gas Association (AGA), which is a gas utility industry trade association. According to the AGA, approximately 95% of the gas price information is based on investor-owned utilities, with 5% based on utilities that are not investor-owned.

PSC personnel stated that gas prices vary between states due to the location of each state's source. Gas producing states such as Florida, Alabama, Mississippi and Virginia do not incur the transportation costs of a state like South Carolina, which receives natural gas from two interstate pipeline companies.

GRAPH 3
COMPARISON OF AVERAGE MONTHLY RESIDENTIAL GAS BILLS

1976 to 1980

(80 MMBTU Annual Consumption) (1)



(1) Average annual residential consumption in South Carolina from 1976 to 1980 was approximately 80 MMBTU. See Appendix F.

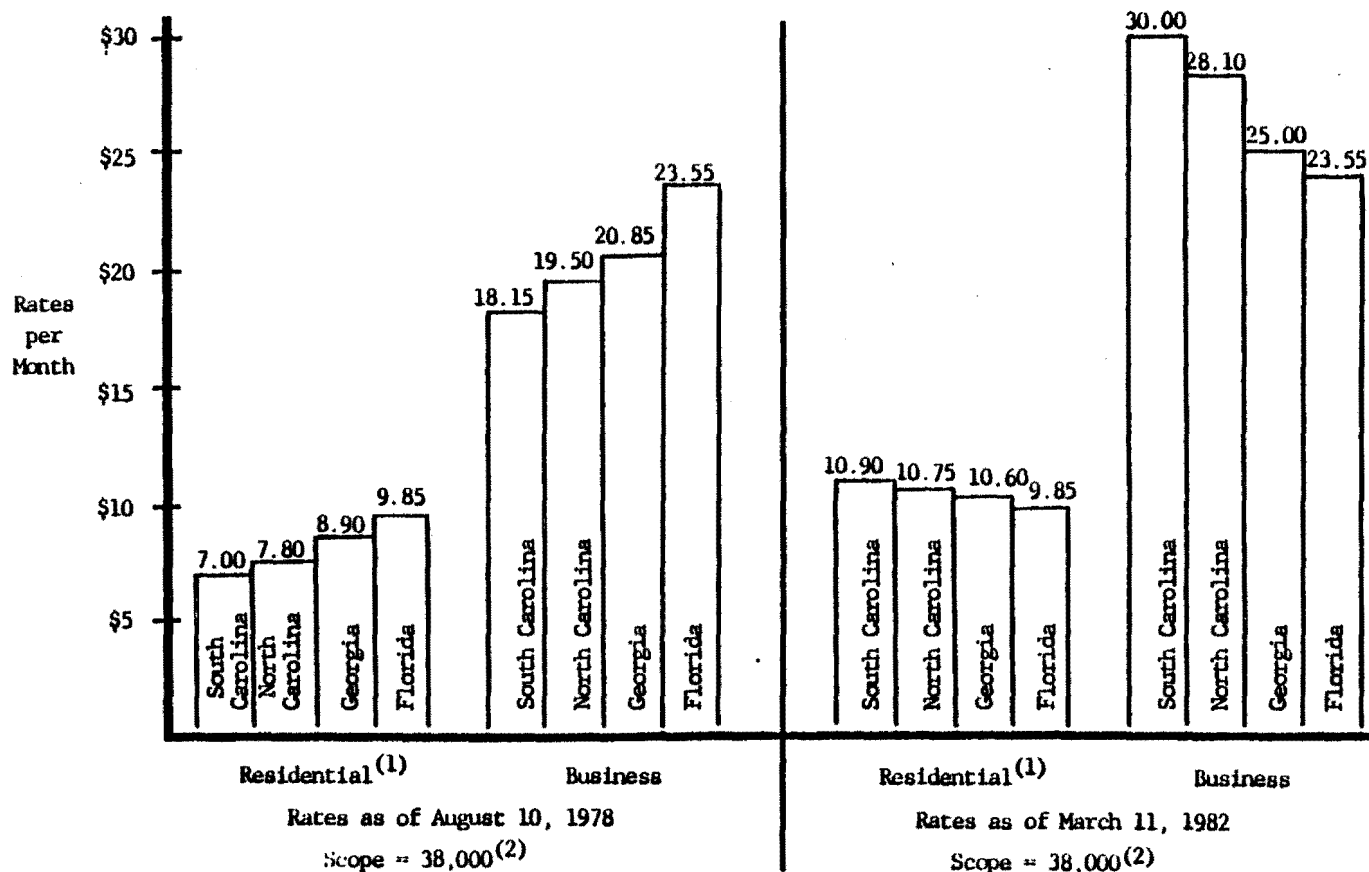
Source: American Gas Association.

Telephone

Graph 4 compares telephone rates of the Southern Bell Telephone Company at a calling scope of 38,000. The calling scope is the number of phones that may be called toll-free. Bamberg, Orangeburg, Seneca and Walhalla are examples of South Carolina cities charged at the 38,000 scope rate (scope ranges from 28,000 to 50,000). As of March 1982, Southern Bell's residential one-party exchange rates in South Carolina ranged from \$9.60 to \$13.15, depending on the size of the calling scope. Southern Bell provides service to approximately 72% of the telephones in the State. The least expensive residential rate for a one-party line in South Carolina in March 1982 was offered by Heath Springs Telephone Company at a rate of \$4.25.

Major factors affecting telephone rates include geographics, age of the systems, local coin rates and long distance usage. According to PSC, comparisons of individual service rates between states are not valid due to the differences in operating conditions. For example, South Carolina's volume of interstate calls is low, making local rates support a higher percentage of investment. South Carolina local rates also pay for a greater portion of pay phones since the State's local coin rates are lower than the local coin rates in North Carolina, Georgia and Florida.

GRAPH 4
COMPARISON OF MONTHLY RESIDENTIAL AND BUSINESS TELEPHONE RATES
SOUTHERN BELL TELEPHONE COMPANY
1978 and 1982



(1) One-party rates.

(2) Rate schedules are based on the size of the calling scope, which is the number of phones that may be called toll-free.

Source: South Carolina Public Service Commission.

The following sections of this chapter present findings on a number of issues related to PSC's role in utility regulation. While the PSC staff has attempted to adapt to changes in regulatory purpose and has addressed some issues, the Council found that there are problems in the following areas: statutes, ratemaking policy, rates under bond, fuel adjustment clauses, construction work in progress, and monitoring of the industry for compliance and other operations.

Statutory Base Needs Revising and Updating

South Carolina statutes governing the Public Service Commission need revising and updating. Public Service Commission statutes, the only declaration of PSC objectives, are unclear, outdated and contain major inconsistencies with regard to regulatory purpose, jurisdiction and procedures. Few policy statements have been made in either the statutes or Rules and Regulations. Instead, both are mainly devoted to PSC procedures and rules of practice, making it difficult to interpret PSC's role in the regulatory process.

The PSC code is unclear in some cases. Phrases such as "in the public interest," "just and reasonable" and "public convenience and necessity" are used to describe the Commission's regulatory responsibilities, rather than definitive statements outlining goals, objectives and specific desired results. There is no outline of how rates are fixed (see p. 89) and no statement of criteria to be met for such regulatory activities as issuing Certificates of Public Convenience and Necessity. The Rules and Regulations do not guide utilities in complying with the Facility Siting Act nor do they define the refund procedures to be used by utilities (see p. 104). Further, the statutes do not address pertinent

issues such as: Whether a utility can file a new rate request before PSC has ruled on a previous case; if PSC's budget is reduced, whether the utilities receive a refund of previously paid assessments; and whether utilities must receive permission from PSC before any utility property, e.g., cars, etc., can be sold.

The code is also outdated and obsolete, containing a chapter on electric streetcars, while failing to address fuel adjustment clauses, an issue that surfaced in the early 1970's. Further, sections are redundant. For example, both Sections 58-5-210 and 58-3-140 address PSC's general supervisory authority.

Inconsistencies in the requirements placed on different types of utilities occur in both the statutes and the Rules and Regulations. For example, the statutes mandate a suspension of rates ranging from 2 to 12 months, depending on the type of utility. The refund requirements among utilities also vary (see p. 94). Regulations concerning complaints require water and wastewater companies to file an annual summary of complaints that remained unresolved for 10 days or longer, and telephone companies are required to file quarterly trouble reports indicating service problems, while the other utilities have no such requirements (see p. 144). Further, while electric utilities are prohibited from discriminatory rate practices, telephone utilities are able to offer discounted rates to employees and retirees.

Based primarily on a 1932 statute, sections have been added and/or repealed over the past 50 years. This has not ensured consistency and clarity or defined PSC's mission in other than procedural terms. Consultant reports dated as far back as 1970 recommended that PSC initiate a study of the statutes, and the Audit Council concurred in 1977.

However, General Counsel at PSC verified that no review of the statutes has been performed by the Commission. One of the stated responsibilities of the Executive Director of the Commission is "directing formulation of policy and legislative proposals and programs."

The statutes should clearly define PSC's goals and policies so agency effectiveness in accomplishing the goals can be better measured. Obsolete, redundant and outdated sections in the statutes hamper the agency's effectiveness. Administrative adjudicative agencies such as PSC particularly need definitive objectives and policies since their decisions may be scrutinized for substantial evidence by the courts. In order for the courts to ensure that the agency has done a careful job of collecting and evaluating the available data, agency objectives for desired results need to be documented and well-defined.

The absence of a uniform code of statutes containing a clearly-defined mission statement of policies and objectives makes interpretation of PSC's role in the regulatory process difficult. With PSC policy decisions made on a case-by-case basis, the courts have little way to measure the effects of a particular Commission decision. The regulated companies and the public may perceive inequities in a system where goals and objectives are not defined. Inconsistent policy can additionally lead to increased litigation and questions arising on particular rate issues (see p. 91).

RECOMMENDATION

THE GENERAL ASSEMBLY SHOULD CONSIDER
DIRECTING THE SOUTH CAROLINA REORGANIZA-
TION COMMISSION TO CONDUCT A STUDY TO

RECODIFY AND SIMPLIFY THE PSC STATUTES AND RULES AND REGULATIONS. OBSOLETE AND REDUNDANT SECTIONS SHOULD BE REPEALED. A MISSION STATEMENT SHOULD BE DEVELOPED TO CLARIFY PSC'S PURPOSE AND OBJECTIVES. FOR EACH AREA OF REGULATORY ACTIVITY, THE REORGANIZATION COMMISSION SHOULD DEFINE WHAT CRITERIA WILL BE USED IN RATEMAKING AND OTHER REGULATORY DECISION-MAKING PROCESSES, AS WELL AS THE DESIRED RESULTS OF EACH ACTIVITY. THESE STATEMENTS OF SPECIFIC AGENCY GOALS AND OBJECTIVES SHOULD BE MADE A PART OF THE RECODIFIED STATUTES AND RULES AND REGULATIONS.

Utility Ratemaking

Introduction

Section 58-3-140 of the South Carolina Code gives PSC the authority to supervise and regulate the rates and fix fair and reasonable standards, classifications, and practices to be observed by the utilities. No further definition of policy or objectives is provided. The Commission stated that it attempts to allow companies to remain solvent and competitive in the marketplace while at the same time it tries to protect the public from excessive charges.

The rate base is an integral part of the ratemaking process and ultimately influences the cost customers have to pay for service. The "investment" the utility makes in order to provide service is called the rate base, which in South Carolina is calculated at original cost. By a 1974 Directive, the Commission has ruled that the electric and gas rate base is to be determined as follows:

Original Cost Rate Base:

| | |
|---------|---|
| | Gross Plant in Service |
| Less: | Reserve for Depreciation & Amortization |
| Equals: | Net Plant |
| Add: | Construction Work in Progress |
| | Materials and Supplies |
| | Working Capital Allowance |
| | Cash (1/8 of Operations and Maintenance |
| | Expenses Less Purchased Power) |
| | Minimum Bank Balances |
| | Prepayments Less Average Tax Accruals |
| Less: | Contributions in Aid of Construction |
| | Accumulated Deferred Income Tax |
| | Customer Deposits |
| Equals: | Total Rate Base |

A 1974 Directive also states components of telephone and telegraph utilities' rate base similar to that above.

After the rate base is computed, the company's annual operating expenses are calculated. Such items as advertising, lobbying and charitable contributions are considered operating expenses. The Commission next decides what "fair return" the utility may earn on its rate base. This return (percentage) represents funds allocated to depreciation, taxes, dividends and retained earnings. The total allowable return on the rate base plus the company's annual operating expenses yield the company's total revenue requirement.

Rate Base x Fair Return + Annual Operating Expenses = Total Revenue

When the utility's total revenue requirement has been computed, the utility customer rate schedules are adjusted to provide the prescribed gross revenue figure.

The following is a discussion of the revenue components. The next two sections deal with rates under bond and fuel adjustment clauses, both of which affect customer utility rates.

Inadequate Directives for Determining Total Revenue Requirements

PSC does not have written guidelines of how components may be treated in calculating a utility's total revenue requirement. The Directives addressing electric, gas and telephone rate bases lack detail and specificity and are, therefore, not as useful as they should be. For example, the Directives do not address "property held for future use" even though the Commission has included this in companys' rate bases since 1978. There are no directives for water/wastewater utilities' operating ratio which is used to determine the rate reasonableness of such utilities. Also, the Commission has not published, in useable form, guidelines on which operating expenses are borne by the customer, although utility rate base calculations allow a portion of these costs to be included as working capital allowances.

The Audit Council requested that PSC furnish a copy of its guidelines and policies regarding costs which are allowed or disallowed in utilities' rate bases. The Council asked for specific information concerning the following: cash working capital; construction work in progress; accumulated deferred income tax; advertising; charitable contributions;

lobbying expenses; customer payments and deposits; materials and supplies in inventory; litigation fees from rate and court cases; and depreciation. PSC's response was to deliver a box containing the latest Commission Orders on the three major electric and telephone utilities and the one major water and one major gas utility along with staff exhibits entered in those cases. These data amounted to 2,597 pages of information which contain scattered references to Commission practices but do not state, in a useable form, policy on rate costs.

An issue that has raised many questions in ratemaking has been the assessment of the value of the rate base, yet PSC has not provided sufficient guidelines, nor has PSC attempted to revise the statutes and Rules and Regulations to more clearly state policy on determining total revenue requirements (see p. 86).

The significance of the rate base in the ratemaking process is that it is the basis, along with operating expenses, for determining the rate increase for the utility and, ultimately, the increased cost for the consumer. Once the rate base is established, it serves as the figure to which the rate of return (percentage) is applied to determine the increase. Simply stated, the higher the rate base, the greater the total revenue requirement will be. A rate base of \$10 million with a 10% return applied will yield a greater dollar return to a company than a rate base of \$6 million with a 10% return applied.

Since 1975, the Commission has heard requests for rate increases of over \$822.63 million from utilities. PSC has ordered increases for more than 2.2 million customers during this period without written guidelines, policy, or even a decision precedent manual (see p. 142). Agencies that have adjudicative powers and wide reaching authority

which impacts on the fiscal and other well-being of the public should have clearly defined policy to guide them in decision making. Both intervenors and the public in general are put at a disadvantage in dealing with the Commission when policies are not clearly defined.

The result of this situation is that the Commission has been inconsistent between utility companies and across types of utilities on the inclusion or exclusion of costs for total revenue calculation. Treatment of the following costs, for example, has been questioned: lobbying; advertising; and charitable contributions. Increased litigation and increased cost to the taxpayer have resulted from questions on PSC policy. Since 1978, 26 cases have been appealed involving rate increases.

Courts are often hesitant to overturn administrative agency rulings since agencies are considered to have the expertise in special areas. However, the absence of formal guidelines makes it more difficult to ensure that this expertise is being applied in a reasonable and consistent manner. Furthermore, hearings have often been prolonged and costly because issues involving rate setting are not clear and must be constantly argued.

RECOMMENDATION

THE GENERAL ASSEMBLY SHOULD CONSIDER
AMENDING THE STATUTES AND RULES AND REGULA-
TIONS TO CLEARLY DEFINE PSC RATEMAKING
POLICY AND OBJECTIVES. PHRASES SUCH AS
"JUST AND REASONABLE" AND "SUPERVISE AND
FIX" SHOULD BE OPERATIONALLY DEFINED.
STATUTES SHOULD ADDRESS EACH COMPONENT
INVOLVED WITH RATEMAKING TO INCLUDE

RATE BASE; COST OF SERVICE, OPERATING AND
MAINTENANCE EXPENSES; WORKING CAPITAL;
RATE OF RETURN; NET PLANT IN SERVICE,
CONSTRUCTION WORK IN PROGRESS; TEST PERIOD;
AND OTHER FACTORS TO BE CONSIDERED SUCH
AS ADEQUACY OF SERVICE.

Rates Under Bond

Introduction

South Carolina's bonding statutes allow regulated utilities to place proposed rate increases into effect under bond pending a final decision by the Public Service Commission. Bonding, in effect, forces customers to "lend" money to the utilities for up to a year or longer, depending on when refunds are completed.

A utility notifies the Commission of its intention to place all or a portion of proposed increases into effect by filing an undertaking, which assures PSC that the utility is financially able to make refunds, if necessary. If PSC's final order disapproves any portion of this "bonded" rate increase, the utility must refund the difference between the revenues generated by the approved rates and the bonded rates, plus 12% interest, as mandated by statute. Refunds ordered by PSC are credited to customer accounts or mailed by check to customers who have moved from the service area. PSC orders refunds based on revenue figures rather than rate schedules, allowing the utilities to earn during the bonded period the same return on common equity that

the Commission grants in the final order. This policy allows companies to keep a portion of the funds that would have been refunded to customers if the companies were required to specifically refund the difference between the bonded rates and approved rates.

A widespread practice in the United States, placing rates into effect under bond is deemed necessary to give utilities financial stability during the time interval between a rate request and approval. The Audit Council found three problems with the bonding practice as it is utilized in South Carolina: regulatory lag in issuing orders; inadequate monitoring of refunds; and lack of policy for refund of interest earned on sales tax.

Regulatory Lag in Issuing Orders

As shown in Table 14, South Carolina is the only southeastern state with a 12-month suspension of proposed rates pending a final decision by the regulatory body. Only six other states in the nation allow a maximum rate change suspension of 12 months or longer.

TABLE 14
MAXIMUM TIME STATES ALLOW FROM THE SUSPENSION OF
PROPOSED RATES UNTIL THE FINAL ORDER

| <u>State</u> | <u>Months</u> |
|----------------|---------------|
| South Carolina | 12 |
| North Carolina | 9 |
| Florida | 8 |
| Alabama | 6 |
| Mississippi | 6 |
| Tennessee | 6 |
| Georgia | 5 |
| Kentucky | 5 |
| Virginia | 5 |

Source: National Association of Regulatory Utility Commissioners.

The Audit Council found that PSC has consistently not issued orders until the statutory deadline. Table 15 is a summary of rate requests placed under bond by major utilities in South Carolina during the past five years. These utilities bonded approximately 33% to 100% of the requested rate increases. During the last five years, PSC has ruled on seven cases in which major electric utilities placed rates under bond. As Table 15 indicates, in all seven cases, PSC waited until the statutory time limit of one year before issuing a decision. PSC suspends proposed rates while investigating a rate request; however, the proposed rates may be placed into effect under bond, subject to refund. Since

the 12-month suspension of proposed electric rates by PSC begins 30 days after the rate increase application is filed, the total ratemaking process lasts 13 months. Utilities point to this regulatory lag as a major reason for placing rates into effect subject to refund.

TABLE 15
MAJOR UTILITIES THAT PLACED RATES UNDER BOND⁽¹⁾

| Company | Appl. Date | Order Date | Revenues ⁽²⁾ | | Granted (000) | Amount ⁽³⁾ | Interest Refunded (000) | 'Total Refunded (000) |
|-------------------|-------------------------|---------------|-------------------------|-----------------|-----------------------|-----------------------|-------------------------------|-----------------------------|
| | | | Requested (000) | Bonded (000) | | Refunded (000) | | |
| Electric | | | | | | | | |
| SCE&G | 11-12-76 | 12-13-77 | \$ 30,269 | \$ 26,851 | \$21,797 | \$ 2,821 | \$151 | \$ 2,973 |
| SCE&G | 06-01-79 | 06-30-80 | 38,981 | 37,204 | 33,537 | 5,572 | 319 | 5,891 |
| SCE&G | 02-27-81 | -- | 74,258 | 73,500 | -- | -- | -- | -- |
| Duke | 04-17-78 | 05-17-79 | 34,545 | 34,545 | 18,206 | 12,526 | 587 | 13,113 |
| Duke | 08-01-79 | 08-29-80 | 25,819 | 25,819 | 23,369 | 2,438 | 103 | 2,541 |
| Duke | 12-30-80 | 01-28-82 | 123,770 | 123,770 | 77,063 | -- | -- | -- |
| CP&L | 06-15-77 | 07-13-78 | 17,528 | 13,621 | 13,000 | 697 | 40 | 737 |
| CP&I. | 03-17-80 | 04-13-81 | 27,831 | 27,461 | 15,339 ⁽⁴⁾ | -- | -- | -- |
| CP&L | 05-01-81 | -- | 39,498 | 39,498 | -- | -- | -- | -- |
| Telephone | | | | | | | | |
| Southern Bell | 08-01-78 | 02-28-79 | 73,824 | 48,211 | 38,028 | 5,779 | 203 | 5,982 |
| Southern Bell | 08-06-79 | 03-05-80 | 35,905 | 18,302 | 21,020 | -0- | -0- | -0- |
| Southern Bell | 09-04-80 | 04-03-81 | 39,608 | 36,542 | 29,742 | 3,939 | 120 | 4,059 |
| Southern Bell | 06-09-81 | 01-08-82 | 78,512 | 52,736 | 35,924 | -- | -- | -- |
| General Telephone | 03-30-81 | 10-30-81 | 7,775 | 7,722 | 4,700 | 1,491 | 60 | 1,551 |
| United Telephone | 04-30-80 | 10-31-80 | 3,682 | 2,469 | 1,670 | 308 | 9 | 317 |
| United Telephone | 03-16-81 | 10-16-81 | 3,958 | 2,572 | 2,602 | 337 | 11 | 348 |
| Gas | | | | | | | | |
| Carolina Pipeline | 02-28-77 ⁽⁵⁾ | 05-31-77 | 6,334 | 6,334 | -- | 65 | 494 ⁽⁶⁾ | 66 |
| Carolina Pipeline | 11-30-77 | 03-30-78 | 4,327 | 4,327 | 3,164 | 230 | 1 ⁽⁶⁾ | 231 |
| Carolina Natural | 04-29-81 | 07-23-81 | 721 | 721 | 663 | 5 | 34 ⁽⁶⁾ | 5 |
| Water/Wastewater | | | | | | | | |
| Carolina Water | 11-28-77 | 03-01-78 | 175 | 88 | 142 | 3 | 42 ⁽⁶⁾ | 3 |
| Carolina Water | 05-31-79 | 08-19-79 | 307 | 100 | 264 | 7 | 108 ⁽⁶⁾ | 7 |
| Carolina Water | 05-22-80 | 08-28-80 | 193 | 164 | -0- | 27 | 388 ⁽⁶⁾ | 28 |
| Carolina Water | 02-27-81 | 05-29-81 | 528 | 414 | 300 | 28 | 566 ⁽⁶⁾ | 28 |

(1) Information current as of 03-08-82. (Figures rounded to the nearest thousand.)
 (2) Figures are based on an annualized (12 months) period.
 (3) Includes sales tax refunded.
 Source: South Carolina Public Service Commission.

(4) Pending in court.
 (5) Company withdrew application.
 (6) Amount shown is actual dollar amount since interest refunded was less than \$1,000. (Figures rounded to the nearest dollar.)

The Commission could render a decision in electric cases in less time if a uniform bonding structure was adopted for all utilities. South Carolina's statutes regarding suspension of rates and rates under bond are outdated and inconsistent. Although electric utility rate hearings have increased by 200% in South Carolina since 1977 and utility market conditions have changed considerably in the last decade, the Public Service Commission is governed by an electric utility bonding law essentially identical to that enacted in 1932. The State's bonding statutes are not consistent between utilities, allowing a bonded period ranging from 2 to 12 months. Proposed electric rates may be suspended by the Commission and placed into effect under bond for up to one year, while the statutory limit for telephone utilities is six months. Gas and water rates may be bonded for 60 days. The inconsistency between current statutes causes the Commission to postpone action on major electric cases to meet the statutory time limit of 60 days on gas and water rate cases.

Section 58-27-870 of the South Carolina Code permits PSC to suspend proposed electric rates, "but not for a longer period than 90 days ... unless the Commission shall find that a longer time will be required, in which case the Commission may extend the period for not to exceed one year." PSC has not met the statutory minimum of 90 days concerning ratemaking for electric utilities but has chosen to use the legal limits to the maximum. Electric utilities had to wait 13 months for final orders. At the same time, customers were forced to "lend" money to the utilities for more than a year since PSC allowed utilities to take from two to three months to complete refunds ordered by the Commission (see p. 102). Other states have found that utilities should be able to

remain financially solvent for at least six months without placing proposed rate increases into effect under bond. Shortening the maximum bonded period would reduce the impact on the customer of placing proposed increases into effect under bond.

Inadequate Monitoring of Refunds

The Public Service Commission's monitoring of utility refunds is inadequate, which could increase the incidence of unclaimed refunds. Refunds are not monitored in a timely manner, and procedures used for verifying refunds need to be improved.

PSC has not monitored refunds in a timely manner and has not exercised their apparent authority concerning refunds for overcollections by electric utilities under bond. The Utilities Division's February 1982 revised procedures call for department chiefs to notify the Utilities Division Director if a company has not certified the completion of a refund within three months of a Commission order. However, the South Carolina Code states:

If the electrical utility fails to make refund of any excess received within thirty days after the rate or rates are finally determined to be excessive, any person, corporation or municipality entitled to any refund may sue therefor in any court of competent jurisdiction . . . (58-27-910)

PSC officials stated that the 30-day limit for electric utilities is "physically impossible" to meet and is not enforced. PSC waits until the utility company certifies that refunds have been made before verifying records at the company. The date of the certification letter does not coincide with the actual date of the refund completion, and the dates the refunds actually began and ended on each case were not included in the Accounting Department's verification of refunds. The

Commission gathered this data at the request of the Audit Council. Table 16 is a summary of the five electric cases in which refunds have been ordered and completed during the last five years. The dates indicate that refunds were actually completed from two to three months after the Commission's order, not within 30 days as intended by statute. This extends the bonding period, during which the utilities are "borrowing" money from their customers at 12% interest.

As Table 16 also indicates, the electric utilities took up to eight months to certify by letter to the Commission that refunds were made in compliance with PSC's final order. Since the Commission staff waits for receipt of the certification letter before verifying company records, excessive time intervals occurred between Commission orders and refund verifications by the PSC. In two instances, this delay in certification notice resulted in PSC verifying the refunds process on one rate case after the company had already filed for a new rate increase under bond. The overlap of refunds and new revenues could complicate the auditing and refund processes and cause confusion resulting in error.

TABLE 16
ELECTRIC UTILITIES
REFUND SCHEDULES

| <u>Company</u> | <u>Rate Change Ordered</u> | <u>Date</u> | | | <u>Time From Order To Refund</u> | |
|----------------|--------------------------------|--------------|--------------|------------------|--------------------------------------|------------------|
| | | <u>Began</u> | <u>Ended</u> | <u>Certified</u> | <u>Ended</u> | <u>Certified</u> |
| SCE&G | 12-13-77 | 2-06-78 | 03-03-78 | 07-14-78 | 2.7 mos. | 7.1 mos. |
| SCE&G | 06-30-80 | 9-05-80 | 10-02-80 | 12-05-80 | 3.1 | 5.3 |
| Duke | 05-17-79 | 7-20-79 | 08-17-79 | 01-08-80 | 3.1 | 7.9 |
| Duke | 08-29-80 | 9-22-80 | 10-31-80 | 02-19-81 | 2.1 | 5.8 |
| CP&L | 07-13-78 | 8-30-78 | 09-08-78 | 11-07-78 | 1.9 | 3.9 |
| <u>Average</u> | | | | | 2.6 mos. | 6.0 mos. |

Source: South Carolina Public Service Commission Records.

Although Section 58-27-910 of the South Carolina Code does not specifically instruct the Public Service Commission to take action after 30 days, Section 58-27-220 of the Code states:

...the Commission shall enforce, execute, administer and carry out by its order, ruling, regulation or otherwise all the provisions of this chapter relating to the powers, duties, limitations and restrictions imposed upon electrical utilities by this chapter or any other provisions of the law of this State regulating electrical utilities.

On some occasions the Commission has chosen to set out specific deadlines for refund completion. For example, in two 1981 telephone rate cases, PSC ordered the companies to make refunds within 60 days. In 1978 and 1981, PSC ordered an electric company to make refunds within 60 days (twice as long as the 30 days stipulated in 58-27-910). If the statutes regarding time limitations on refunds are deemed unclear or impractical by the Public Service Commission, the Commission should initiate the formulation of legislative proposals for the General Assembly's

consideration. As a regulatory body the Commission is directed to monitor the operations of public utilities and "to fix just and reasonable standards, classifications, regulations, practices and measurements of service" to protect the public interest.

The Code, in Section 58-9-580, gives telephone utilities 60 days to make refunds before suit may be brought. In all five telephone rate cases where refunds were ordered and completed since 1979, the telephone companies completed the refunds within the 60 days. Other utilities should be able to operate within this time frame.

Additionally, PSC procedures for verifying refunds need to be improved. PSC accountants who monitor refunds had no checklist or standard procedures to follow. Each accountant handled refund verification using his own approach. The Utilities Division has taken steps to improve its monitoring of refunds. They acknowledge that written procedures are needed to ensure that all PSC personnel verify refunds consistently and effectively, using the same sampling techniques, criteria and step-by-step methodology.

PSC's inadequate monitoring has resulted in excessive time elapsing between a Commission order and refund completion. This allows the companies to continue to "borrow" funds from their customers at a 12% interest rate. In addition, this could increase the incidence of unclaimed utility refunds. For example, customers who move from an area before receiving a refund lose the funds if the utility is unable to locate them. Utilities are required to hold unclaimed refunds for seven years before reverting the monies to the State Treasury.

Lack of Policy for Refund of Interest Earned on Sales Tax

The Public Service Commission has established no policy regarding interest that should be paid by utilities when refunding sales tax collected while rates were bonded. As a result, some companies have not refunded to customers interest earned on excess sales tax.

Sales tax collected from customers by utilities is forwarded monthly to the South Carolina Tax Commission. If the Public Service Commission orders revenues to be refunded, the company applies to the Tax Commission for a refund of the excess tax collected. The Tax Commission returns the funds to the utility with interest at the rate of one-half of one percent per month (6% annual interest) from the time the funds were remitted to the Tax Commission, as required by Section 12-35-1350 of the South Carolina Code.

The Audit Council reviewed the seven most recent (1979-81) electric and telephone cases in which the Public Service Commission ordered a company to make refunds of bonded revenues collected in excess of approved rates. As shown in Table 17, in four of the seven cases, no interest on sales tax was refunded to the customer, although the Tax Commission paid utilities 6% interest on the tax revenue. Only one utility, which had two cases in the time period reviewed, paid customers 6% interest on the sales tax refunded.

Refund verification files on one case examined by the Council had been purged and were not available for review. PSC issued its final order in the case in April 1981, which required refunds in excess of \$4 million. The refund verification files were purged less than a year later. The Accounting Department has no standard policy on retaining records. By disposing of refund files prematurely, PSC cannot provide documentation of its verification of refunds if a question arises.

TABLE 17
SALES TAX REFUNDS

| <u>Company</u> | <u>Docket Number</u> | <u>Amt. of State Sales Tax Refunded to Customers</u> | <u>Amt. of Interest Pd. to Customers on Sales Tax Refunds</u> | <u>Interest Rate Paid on Sales Tax Refunds</u> |
|------------------|----------------------|--|---|--|
| SCE&G | 79-196-E | \$214,113 | -0- | -0- |
| Duke | 78-189-E | 252,318 | 4,544 | 6% |
| Duke | 79-300-E | 89,487 | 33 | 6% |
| Gen. Telephone | 81-121-C | 48,992 | -0- | -0- |
| United Telephone | 80-141-C | 12,324 | -0- | -0- |
| United Telephone | 81-106-C | 13,497 | -0- | -0- |
| Southern Bell | 80-263-C | Refund verification files purged. | | |

Source: South Carolina Public Service Commission Records.

The inconsistency in utilities' sales tax refund procedures has occurred because the Commission has not addressed the sales tax issue, neglecting to set out specific guidelines for the utilities. PSC should make legislative proposals which state a clearly-defined policy on sales tax interest to prevent misunderstandings or misinterpretations of the law. By not addressing the issue of interest on sales tax, the Public Service Commission allows customers and companies to be treated inequitably.

RECOMMENDATIONS

THE GENERAL ASSEMBLY SHOULD CONSIDER ADOPTING
UNIFORM STATUTES FOR ALL UTILITIES REGARDING
SUSPENSION OF RATES AND TEMPORARY RATES UNDER

BOND. THE PUBLIC SERVICE COMMISSION SHOULD BE ALLOWED TO SUSPEND RATES FOR A MAXIMUM OF SIX MONTHS PENDING A FINAL DECISION ON A RATE REQUEST, WITH AN ADDITIONAL THREE-MONTH EMERGENCY PERIOD, IF NECESSARY. IF AFTER THE FIRST SIX MONTHS PSC IS UNABLE TO RENDER A DECISION, THE UTILITY SHOULD BE ALLOWED TO PLACE THE PROPOSED RATES INTO EFFECT UNDER BOND FOR THE REMAINING THREE MONTHS. THE PROPOSED RATES SHOULD BECOME EFFECTIVE IF A FINAL ORDER HAS NOT BEEN ISSUED WITHIN THE NINE-MONTH PERIOD.

THE INTEREST RATE UTILITIES PAY ON REFUNDS SHOULD BE REVIEWED BY THE COMMISSION PERIODICALLY AND ADJUSTMENTS MADE IF NECESSARY TO REFLECT CHANGES IN THE MARKET CONDITIONS. THE INTEREST RATE PAID ON REFUNDS SHOULD BE MADE A PART OF THE RULES AND REGULATIONS, RATHER THAN THE STATUTES, TO ALLOW FOR TIMELY INTEREST RATE ADJUSTMENTS.

THE GENERAL ASSEMBLY SHOULD CONSIDER ADOPTING A UNIFORM STATUTE REGARDING REFUNDS. ALL UTILITIES SHOULD BE ALLOWED 60 DAYS TO COMPLETE REFUNDS ORDERED BY THE PUBLIC SERVICE COMMISSION. THE COMMISSION SHOULD STRICTLY MONITOR THE 60-DAY REQUIREMENT.

THE COMMISSION SHOULD IMPLEMENT STANDARD PROCEDURES TO BE FOLLOWED BY ALL COMMISSION PERSONNEL RESPONSIBLE FOR MONITORING AND VERIFYING UTILITY REFUNDS, INCLUDING UNIFORM SAMPLING TECHNIQUES, CRITERIA AND METHODOLOGY.

PSC RULES AND REGULATIONS FOR UTILITIES SHOULD BE AMENDED TO CLEARLY DEFINE THE COMMISSION'S REFUND POLICY, SPECIFICALLY STATING WHAT COMPONENTS ARE INCLUDED IN EACH REFUND. WHEN REFUND CHECKS ARE TO BE MAILED BY UTILITIES TO CUSTOMERS WHO HAVE MOVED FROM A SERVICE AREA:

REFUNDS OF AMOUNTS LESS THAN ONE DOLLAR SHOULD BE HELD AT THE UTILITIES' OFFICES. CUSTOMERS MAY COLLECT THE REFUNDS IN CASH TO REDUCE EXCESSIVE COSTS OF PROCESSING CHECKS OF THIS AMOUNT.

Fuel Adjustment Clauses

Introduction

Fuel adjustment clauses (FAC's) allow electric and gas utilities to pass through energy costs changes, both increases and decreases, to

customers without a general rate hearing. Since the cost of energy is difficult to predict and accounts for a large percent of operating and maintenance expenses (62% for the three major electric utilities in 1980), a properly designed and operated fuel clause can reflect changes in the cost of energy more quickly than a general rate case. This practice became widespread due to the rapid fluctuation of raw fossil fuel costs, especially coal, in the early 1970's.

There are some indications that the states are tightening up on escalation of utility bills through use of FAC's. The number of commissions which did not roll any FAC charges into basic rates increased from seven in 1976 to 11 in 1977. Eleven commissions now partially or totally prohibit use of FAC's.

In South Carolina, FAC's have been established for electric utilities and purchased gas adjustment (PGA) clauses for gas utilities. The three major electric utilities - Duke, Carolina Power and Light and South Carolina Electric and Gas - each have individual FAC's. PSC has developed adequate monitoring procedures and requires semiannual fuel hearings before costs can be passed on. The three smaller electric utilities, who largely purchase rather than generate power, make monthly adjustments to customer bills without a hearing. PGA's also allow gas companies to make adjustments without formal hearing. However, in these two latter cases the Commission does track and annually audit costs. Since wholesale rates for purchased power and gas are set by the Federal Energy Regulatory Commission, PSC feels that there is less need for the formal hearing to allow these increases to be passed on.

Fuel Clauses Need Study and Improvements

PSC allows utilities to use fuel adjustment clauses to pass through costs other than volatile raw fuel costs. Transportation costs and nuclear waste disposal costs, both of which are recovered through fuel adjustment clauses, have historically remained stable or fluctuated only moderately.

Additionally, PSC has allowed companies to recover, through fuel adjustment clauses, assets lost when nuclear waste reprocessing was eliminated. Losses from waste held by companies for reprocessing were amortized over a ten-year period and are charged in fuel adjustments every six months.

There are no specific statutes or regulations which outline objectives or policy PSC should follow on fuel adjustment costs. Because of this, clauses have been broadly stated and lack refinement. Costs for items which do not fluctuate rapidly have been recovered through fuel clauses. Also, PSC did not promulgate regulations as recommended by the Joint Legislative Review Committee in 1978, which would have excluded some costs and contributed to a more refined procedure.

The purpose of fuel adjustment clauses is to mitigate the effect of volatile cost items a company purchases on a continuous basis. According to the National Regulatory Research Institute, there are three criteria for the continued use of fuel adjustment mechanisms which constitute a test of appropriateness. The lack of the existence of any one constitutes a reason to question and perhaps disallow automatic power rate increases. These criteria are:

1. Extreme volatility of fuel prices, fluctuating up and down during short time periods.

2. Fuel costs constitute a significant portion of total costs.
3. The cost of fuel involves a cost over which the utility has little or no control.

Utilities in South Carolina receive a significant amount of increased annual revenue from adjustments. For example, the three major investor-owned electric utilities obtained about \$61.3 million, or 40% of their increased gross revenue, from fuel adjustments from February 1979 to September 1981.

The fuel adjustment process is not a substitute for a formal rate case but is rather an interim measure to function between rate cases. Nonvolatile cost items which do not fluctuate in an extreme manner over short time periods should be handled in rate cases.

The effect of including cost items inappropriately in the fuel adjustment process is that consideration of items is exempt from the general hearing process. Fuel adjustment audits require approximately 1,920 man-hours per year. This means that four auditors spend three months each performing fuel adjustment audits. This does not include hearing time and other related activities. Staff time and other resources could be better spent in other monitoring areas if the need to handle fuel adjustment procedures in the current manner is not necessary.

A criticism of FAC's in general is that they relieve the pressure on utility management to reduce costs, since the FAC provides partial rate increases between rate cases. Thus fuel adjustment clauses may have the unintended effect of partially protecting utility management from the consequences of inefficiency and ineffective management. Since PSC requires that fuel adjustment be scrutinized and set in public hearings, this effect is reduced. However, South Carolina clauses

could be refined. They do not limit spot purchasing of fossil fuels, purchase of power over generation of power or the amount of fuel costs recovered by clauses. This does not encourage companies to search for the most economical source of fuel and use the most efficient management techniques. Refining the treatment of these and other components could reduce costs passed on to consumers. PSC staff acknowledge that management efficiency incentives need to be a part of fuel clause formulation and are studying this area.

Further, since two of the three major South Carolina electric facilities now have nuclear power capability and the other has plans for future nuclear generation, reliance on volatile cost fossil fuels is diminishing. South Carolina now depends on nuclear generation for about 44% of its total energy. Since nuclear energy is lower and more stable in cost, a question is raised as to whether the current method of handling clauses is necessary in all cases. PSC needs to evaluate the use of fuel clauses in light of specific criteria designed to identify a company's need for interim ratemaking and develop incentives to increase efficiency of utility management.

RECOMMENDATIONS

PSC SHOULD STUDY THE NEED FOR ELECTRIC AND OTHER FUEL ADJUSTMENT CLAUSES. SPECIFIC CRITERIA SHOULD BE ESTABLISHED TO MEASURE THE APPROPRIATENESS OF USING FUEL ADJUSTMENT CLAUSES. FOR CASES WHEN PSC SHOULD DECIDE TO USE FUEL ADJUSTMENT, OBJECTIVES AND POLICY CONCERNING HOW

CLAUSES WILL BE FORMULATED SHOULD BE INCLUDED IN THE STATUTES. NONVOLATILE COST ITEMS SUCH AS TRANSPORTATION AND NUCLEAR WASTE DISPOSAL AND UTILITY LOSSES SHOULD BE ELIMINATED FROM FUEL CLAUSE ADJUSTMENT AND HANDLED IN GENERAL RATE SETTINGS.

THE FOLLOWING SPECIFIC ITEMS SHOULD BE CONSIDERED IN THE REFINEMENT OF CLAUSES:

- (1) ALLOW ONLY A PERCENTAGE OF FUEL COSTS (TO BE DETERMINED BY PSC) TO BE PASSED THROUGH FUEL ADJUSTMENT CLAUSES.
- (2) LIMIT COSTS FOR FUEL RECOVERED BY FUEL CLAUSES TO NO MORE THAN 10% ABOVE THE SOUTHEASTERN AVERAGE COST OR THE AVERAGE COST OF THE THREE MAJOR ELECTRIC COMPANIES.
- (3) LIMIT SPOT PURCHASING OF COAL TO CASES WHEN IT IS MORE ECONOMICAL THAN CONTRACT PURCHASING.
- (4) ALLOW COSTS FOR PURCHASED POWER TO BE INCLUDED ONLY IN SITUATIONS WHERE IT IS NOT POSSIBLE OR ECONOMICAL TO GENERATE POWER.

Construction Work in Progress

Introduction

The Council found three problems with PSC's treatment of construction work in progress (CWIP). First, PSC has not adequately evaluated utility construction, allowing projects to be started without adequate verification of need and cost. Second, PSC has not monitored projects under construction to ensure that they are being efficiently managed and that they meet PSC and other safety standards. Finally, PSC's method of allowing companies to be compensated for expenditures incurred for construction work could result in overcompensation to utilities.

Lack of Evaluation of Construction Needs

PSC does not adequately evaluate utility construction needs. Fourteen major electric utility facilities, totaling over \$783 million, have been under construction since 1975 without proper verification of need and cost. Also, other construction has been performed without adequate monitoring.

PSC issues Certificates of Public Convenience and Necessity (CPC&N) to utilities for projects constructed outside the company's territory or authority. Utility construction conducted inside a company's territory or authority is not required to be approved by PSC. An exception to this is major electric facilities, which under The Utility Facility Siting Act (Chapter 33, Title 58 of the South Carolina Code) must be approved by a CPC&N. A major electric facility is defined as an electric generating plant operating at capacity of 75 or more megawatts or transmission lines with 125 or more kilovolts.

PSC relies on company data to prove the need for a new plant in CPC&N hearings. Staff reports and forecasts are not developed and there is no evidence to show that information related to cost-efficiency, planning and design, and bidding and purchasing are verified by the Commission staff. All 14 major electric facility projects since 1976 were approved as requested by the companies, without amendments. Also, because the statutes do not address construction oversight in a uniform manner construction conducted inside a company's territory is exempt from the approval process.

PSC allows utilities to recover their construction costs by including them in their rate base, which is the basis for customer bills. PSC has the duty to ensure that all components of rate and service are equitable. When construction is necessary, projects should be evaluated to ensure that companies practice cost-efficiency.

Without adequate evaluation, the opportunity exists for utilities to engage in construction that may be excessive and unnecessary, with ratepayers bearing the burden of inefficient management and planning of construction projects through increases in their rates. In California, for example, utilities' forecasts of electric need between 1977 and 1980 have been, on the average, 54% over the Energy Commission's forecasts. South Carolina does not perform independent forecasts for construction permits, but accepts company data.

Power plant cancellations and delays have added to the rising cost of electricity. The decision of a Wisconsin utility to cancel a nuclear plant project will cost its customers \$80 million. A New York utility study shows that a 12-month delay in commercial operation of a nuclear project increased the project's costs by a total of \$100 million. Lack of

proper evaluation and oversight of construction needs has been one problem that has contributed to cancellations and delays.

Inadequate Monitoring of Construction Projects

PSC does not monitor projects in progress for cost overruns, adequacy of design and materials or quality of construction. PSC requires utilities constructing nuclear plants to submit cost information during construction; however, there is no system to review and use this information in a consistent way.

Records were not kept that show on-site visits were used to monitor construction progress. A review of records dating from January 10, 1980, when files were begun, showed that PSC made no visits to review the 14 major electric utility construction projects approved over the past five years. Out of a total of 23 visits to other electric utility facilities made from January 1980 to October 1981, only six were general site visits and three were to identify problems. The majority (48%) of these on-site visits were to verify coal purchases. No checklist was used for the review to verify areas examined and no reports were filed as a result of these visits.

PSC's Telecommunications personnel began, in 1981, to review projects costing more than \$300,000. Since then, eight reviews of only two of 30 regulated companies have been completed. These were performed in conjunction with rate cases and included a review of company information on budgets and cost alternatives. Construction by gas and water/ wastewater utilities has not been regularly monitored by PSC although the gas department does check some construction safety standards.

Inconsistent statutes, which do not always call for prior PSC approval of construction, allow PSC to be lax about construction oversight. PSC states that it lacks enough qualified engineers to carry out the oversight function. Only one additional staff position has been granted to the Division in the past seven years although the Division has consistently pointed to a need for more personnel. According to PSC's Chief Engineer, complaints and rate cases, which have grown more complicated and have increased 200% in the past five years, take up the majority of staff time. This leaves little time for other supervisory functions.

PSC personnel have stated that although systematic monitoring of construction projects is not done, during rate cases information related to construction work in progress is discussed. However, the Council found PSC staff analysis is limited to a review of property inventory if a piece of construction equipment should happen to be part of the audit sample. Monitoring can be conducted through continuous receipt and review of project information or through periodic construction management audits which give a view of a project at a particular point in time. In addition, incentives could be built into rate policy which would discourage utilities from allowing factors under their control to increase project cost.

Without adequate review it cannot be determined if facilities comply with PSC and other safety standards. PSC staff are developing uniform procedures for monitoring construction projects. One hundred and eighty-four large electric generating plants in the U.S. were cancelled from 1974 through 1978, 43% of these being nuclear plants. A cancellation occurs when the electric utility announces that it no longer intends to

build or operate the power plant. Since 1974, the majority of all electric power plants have been delayed. A 1980 General Accounting Office (GAO) study reveals several problems attributed to these cancellations and delays; among them are construction problems. One nuclear plant currently under construction in South Carolina has cost ratepayers \$531.8 million and construction has been delayed indefinitely. Another South Carolina nuclear plant has cost overruns of more than \$950 million. Adequate monitoring of construction could contribute to an overall decrease of expenditures and elimination of some costs to consumers.

Compensation for Construction Costs is Greater than Necessary

PSC's method of allowing utilities to be compensated for construction expenditures could result in customers paying more than necessary for construction projects.

The term "construction work in progress" (CWIP) refers to expenditures for plant and equipment which are under construction. "Allowance for funds used during construction" (AFUDC) means financing costs that will be collected when a project is completed and in service. Both of these items play a part in determining the costs consumers pay for utility services. Of 33 State Commissions that allow CWIP in the rate base, 18 use AFUDC to some extent to offset utility revenue requirements.

Utility construction expenditures are paid for by the customer. Compensation to the company for investment during construction can be provided during the construction period or delayed until the plant is in service. Alternatively, a portion of the compensation can be provided during construction and the remainder when the plant is in service.

There is controversy concerning whether, over the life of the facilities, granting a current return on investment costs customers less than delaying the return. Delaying compensation for investment during construction until a plant is in service will more satisfactorily assess construction financing costs on those customers who benefit from the plant. However, delaying the compensation will, in certain financial circumstances, increase overall financing costs charged to customers.

In either case the company must be reimbursed for funds borrowed including interest costs. Allowing CWIP to be included in the rate base without an AFUDC offset could cause customers, in the long run, to pay less. This is because financing costs would not be compounded but would be reimbursed through the return (%) on the rate base maintained at a constant rate.

South Carolina statutes do not address the method to be used in treating construction expenditures or financing costs nor do they outline factors to consider. Generally, PSC allows utilities to include CWIP expenditures in the rate base and include financing costs in income. This practice is intended to offset the additional costs to consumers of placing CWIP expenditures in the rate base and lower revenues which customers must provide. In telephone cases, PSC allows only a portion of construction to be offset. For gas and electric utilities, PSC allows all CWIP expenditures to be offset.

PSC's procedure to allow CWIP expenditures in the rate base during the construction period and an AFUDC offset in income may not be the most equitable to ratepayers. PSC uses the Federal Energy Regulatory Commission's formula to compute the AFUDC offset.

However, the Federal Energy Regulatory Commission's formula is an inappropriate formula because it was not designed for use as an offset method. That agency generally excludes CWIP expenditures from the rate base and uses the formula to capitalize AFUDC to be paid only when a plant is in service. PSC allows the company to earn a return on the construction expenditures in the rate base and also allows companies to compound financing costs monthly until a project is completed.

When the construction is finished and the facility provides service, the compounded financing costs are placed in the rate base to be collected. This process can expand the rate base unduly when construction continues for several months or years. A 1980 GAO study states that delays in nuclear plant operation average from 26 to 59 months. Allowing AFUDC to accumulate during the delay period as well as over the longer construction period could result in customers paying more than necessary for construction projects. Total dollars paid by customers are less if CWIP expenditures are included in the rate base without an offset.

PSC staff has recommended that the Commission eliminate the inclusion of AFUDC; however, the Commission has not accepted the staff recommendation. Furthermore, the lack of statutes or regulations in this area has inhibited regulatory effectiveness.

The 1980 GAO study of construction work in progress pointed out that with reliable study and oversight of utility construction:

Consumers as a whole may actually pay less for new generating capacity when AFUDC is not capitalized, because it results in a smaller rate base.

The GAO study determined that in a hypothetical case, revenue requirements would be \$129,371 greater by allowing AFUDC to be capitalized rather than eliminating it and allowing only CWIP in the rate

base. Increased revenue requirements mean higher utility bills. GAO estimates that the increased revenue requirement in this case would contribute, over a 15-year period, to a difference in consumer payments in excess of \$26,900. This study employed a conservative model (plant cost was \$.5 million and construction time five years). More expensive construction projects which take much longer to complete would result in much higher consumer payments than that noted.

The North Carolina Utilities Commission has recently begun to exclude AFUDC from computation. This will, over the life cycle of a facility, contribute to lower utility bills than if AFUDC were allowed.

In the 1982 CP&L rate case, Docket No. 81-163-E, PSC staff performed an analysis of differences in revenue requirements between using PSC's current method and that of eliminating AFUDC while leaving CWIP expenditures in the rate base. Staff determined that a change of methods would mean an initial increase in revenue requirements of \$3.9 million. This amounts to approximately \$.94 more per month for the average customer. Although there is an increased revenue need which is initially felt when CWIP is included without an offset, the benefits associated with excluding AFUDC outweigh this effect since accrued financing costs are not placed in the rate base.

An additional effect of AFUDC is that it affects the return on equity figure. The financial stability of a utility can be affected for companies "booking" large amounts of AFUDC as income to be collected in the future. This makes borrowing funds more difficult and expensive for these companies. Equity investors then require higher rates of return to induce them to invest. Allowing unreasonably high rates of return on common equity violates the regulatory principle that calls for only reasonable returns on invested capital.

RECOMMENDATIONS

THE GENERAL ASSEMBLY SHOULD CONSIDER AMENDING CHAPTER 33, TITLE 58 OF THE SOUTH CAROLINA CODE OF LAWS TO REQUIRE THAT ALL MAJOR UTILITY CONSTRUCTION FOR EACH TYPE OF UTILITY BE REVIEWED AND APPROVED BY PSC.

PSC SHOULD ESTABLISH PROCEDURES TO ENSURE THAT MONITORING IS CARRIED OUT FOR MAJOR UTILITY CONSTRUCTION, ESPECIALLY NUCLEAR PLANTS. PSC SHOULD CONSIDER PENALIZING COMPANIES THAT EXCEED ORIGINAL PROJECT COST ESTIMATES BY REDUCING THE RATE OF RETURN TO BE EARNED ON EXCESS EXPENDITURES. THIS MEASURE SHOULD BE EMPLOYED WHEN SUCH EXCESSES ARE WITHIN THE CONTROL OF THE UTILITY.

THE STATUTES SHOULD BE UPDATED TO INCLUDE STATEMENTS OF OBJECTIVES AND RATE POLICY CONCERNING CONSTRUCTION WORK IN PROGRESS.

PSC SHOULD ELIMINATE THE ALLOWANCE FOR FUNDS USED DURING CONSTRUCTION FROM ALL UTILITIES' INCOME, AND CONSTRUCTION WORK IN PROGRESS SHOULD BE TREATED AS FOLLOWS:

- (1) CHOOSE A DATE AFTER WHICH ALL CWIP
WILL BE PLACED IN THE RATE BASE WITHOUT
AN AFUDC OFFSET.
- (2) ALLOW AN AFUDC OFFSET ON THAT PORTION
OF CWIP THAT WAS BEGUN BEFORE THE
ABOVE DATE.

PSC COULD FURTHER LIMIT CWIP TREATMENT BY
CONSIDERING THE FOLLOWING REFINEMENTS:

- (1) ALLOW IN THE RATE BASE ONLY THE PORTION
OF CWIP TO BE PLACED IN SERVICE WITHIN
TWO YEARS.

OR

- (2) ALLOW IN THE RATE BASE ONLY THE PORTION
OF CWIP THAT IS NEARLY COMPLETE. THIS
PORTION SHOULD NOT EXCEED A CERTAIN
PERCENTAGE, TO BE DETERMINED, OF THE
TOTAL VALUE OF UTILITY PLANT ALLOWABLE
IN THE RATE BASE.

Oversight of Utilities

The Public Service Commission does not adequately monitor utilities to ensure compliance with the law. The Commission has never ordered a utility to undergo an objective management review. An Audit Council review of PSC's monitoring process revealed that there has been an insufficient review of utility operations, and the Commission has used inadequate procedures for the reviews it has performed.

No Management Audits of Utilities

The South Carolina Public Service Commission has never ordered a utility in the State to undergo an objective management review of its operating performance, structure, objectives or efficiency. Only four South Carolina utilities have been reviewed by outside independent consultants. All four were ordered by the North Carolina Public Utilities Commission and included two electric, one gas and one telephone utility which serve both North Carolina and South Carolina. The telephone review was performed on North Carolina operations only. Questions have been raised as to the management of some utilities. However, the Commission has not used outside independent reviews to scrutinize these problems.

Commissioners have stated they feel PSC does not have the authority to review management issues. However, the Council finds the authority granted in Section 58-27-160 of the 1976 South Carolina Code of Laws, which states in part:

The Commission may, on its own motion and whenever it may be necessary in the performance of its duties, investigate and examine the condition and management of electrical utilities or any particular electrical utility.

An increasing number of states are using management audits as a part of their normal review for rate increase cases. Thirty-seven states order audit reports which evaluate all aspects of a utility company's operations to determine whether the entity is managing or using its resources in the most economical and efficient manner possible. These audits determine the causes of any inefficiencies or uneconomical practices, including inadequacies in management, administrative procedures or organizational structure. The public's best interest is served by good management and efficient operations.

Section 58-27-160 of the South Carolina Code grants PSC the authority to investigate and examine the condition and management of electric utilities. In addition, the Attorney General advised, in an opinion dated March 5, 1975, that some management issues should be scrutinized by the Commission to avoid any abuse of discretion by the utility.

Because PSC does not require utilities to undergo management audits, companies may have less incentive to apply and enforce efficient management practices. This is particularly true in cost-plus ratemaking where the size of a company's rate base is important in determining the amount of revenue granted through the return on the rate base (see p. 89). Since PSC has not made efficiency audits a priority item, costs incurred through less than economical management practices must be passed on to the customer.

In 1974, the New York Public Service Commission ordered an independent consulting firm to conduct a management audit of a major electric utility. The audit revealed that the utility might be able to improve its earnings by as much as \$50 million annually by implementing a combination of cost reduction and efficiency improvements in specific areas. The consulting firm also concluded that through greater efficiency, the company's cash flow would be improved by as much as \$35 million annually.

An independent consulting firm which performs managerial reviews of Colorado's utilities lists the following as benefits derived from three reviews:

- (1) A managerial review of administrative areas performed in 1968 produced an estimated savings of \$1 million per year.

- (2) A materials management and inventory review generated an estimated savings in interest expense of \$500,000 to \$1 million per year.
- (3) Another material management review revealed a \$29 million savings from inventory that was not used in five years.

The four management audits ordered of North Carolina/South Carolina companies by the North Carolina Utilities Commission did not attach cost saving figures to recommendations. Management audits could be more useful if they did include cost information such as that cited above.

A potential advantage of management audit procedures is that the Commission's understanding of the utility industry is broadened. New insights gained by the Commission will expand its capability to analyze financial requirements of a company in order to determine the need for and size of rate increases. The management audit also provides an independent analysis of the problems that confront a utility and the performance of the utility in dealing with the problems. The public's confidence in the operation of the utilities would be strengthened. In addition, because a management audit is directed at future policies and programs, the audit can provide the basis for the company to take appropriate corrective action to avoid future operating problems.

Insufficient Review of Operations

The Council found that PSC has not conducted sufficient reviews, which include audits and inspections, in order to ensure compliance with the law. Compliance audits are the on-site examination and verification of the utilities' financial records and accounts to determine compliance

with PSC rules and approved rates. According to the PSC staff, no compliance audits of utilities, which would involve verification of approved rates, gross receipts and rate of return, have been performed in the past five years. PSC has audited the industry for rate increase cases, refunds and fuel cost adjustments.

Compliance inspections check and test the utilities' adherence to the Rules and Regulations. This review would cover company operations, engineering standards and records such as those concerning interruption of service, accidents, complaints, service reports, meter histories and tests, and customer information. The Council found that in the past five years PSC has performed compliance inspections at only 46% (263 of 568) of the regulated utility facilities. Of the 153 water/wastewater utilities the Commission monitors, 79 (51%) have been inspected since 1977. The Telecommunications Department has inspected 56% of the telephone facilities in five years.

The Gas Department monitors six privately-owned gas utilities with 112 facilities for compliance with proper rates, services and pipeline safety. Although Gas Department records indicate that in 1981, 418 inspector days were spent monitoring pipeline safety pursuant to The Natural Gas Pipeline Safety Act of 1968, only 20 days were used to conduct inspections to ensure compliance with the State Rules and Regulations. This allowed only 13% of the gas facilities to be inspected for compliance to State Rules and Regulations. The lack of coordination in Gas Pipeline Safety inspections and compliance inspections has not allowed for the most efficient use of staff time and, therefore, reduced the number of evaluations performed. The Electric Department did not perform any compliance inspections until 1981.

Table 18 shows the number and percentage of utility inspections performed from 1977 to 1981 for compliance to PSC Rules and Regulations.

TABLE 18
COMPLIANCE INSPECTIONS OF UTILITY FACILITIES
1977 THROUGH 1981

| Calendar Year | Electric | | Gas ¹ | | Telecommunications | | Water/Wastewater | |
|---------------|------------------|-----------------------|------------------|-----------------------|--------------------|-----------------------|------------------|-----------------------|
| | Number Inspected | % of Total Facilities | Number Inspected | % of Total Facilities | Number Inspected | % of Total Facilities | Number Inspected | % of Total Facilities |
| 1977 | - | - | - | - | 27 | 12% | 13 | 8% |
| 1978 | - | - | - | - | 13 | 6% | 15 | 10% |
| 1979 | - | - | 6 | 5% | 29 | 13% | 10 | 7% |
| 1980 | - | - | 7 | 6% | 20 | 9% | 22 | 14% |
| 1981 | 32 | 38% | 15 | 13% | 35 | 16% | 19 | 12% |
| TOTAL | <u>32</u> | <u>38%</u> | <u>28</u> | <u>25%</u> | <u>124</u> | <u>56%</u> | <u>79</u> | <u>52%</u> |

¹This figure does not include inspections for Gas Pipeline Safety.

Source: South Carolina Public Service Commission Records.

The PSC staff stated that companies are reviewed by the Commission only during rate and fuel cases and through complaints because staff gives priority to these functions which, as previously noted, take up the majority of their time. However, PSC has not developed a comprehensive systematic plan for reviewing utility operations. None of PSC's four utility departments have established goals and objectives as to the number of facilities to be inspected annually for compliance to PSC's Rules and Regulations.

The on-site review of utilities should be performed by a team of compliance auditors and inspectors. This would allow for coordination

between accounting and other technical staff to provide an integrated review of compliance to PSC's service standards and orders.

Through compliance audits and inspections, the understanding of utility operations is broadened. Compliance auditing also serves not only to verify financial records but also assures that costs incurred are properly expensed and that charges are fairly made. Additionally, coordinated compliance reviews function to help PSC anticipate and prevent problems. They also provide the basis for the utility to take corrective action to avoid future problems. PSC records show that one-third of complaints the Commission receives are service-oriented and 48% concern billing. The performance of regular, systematic compliance reviews could serve to prevent some service problems and ensure that proper rates are being charged.

Without a systematic plan for review of regulated companies, PSC has reacted to problems rather than taken measures to avoid them. The lack of planned monitoring has also resulted in reviews that are restricted and limited in scope. For example, the Telecommunications Department restricts its central office inspections to tests of dial pulse speed, percent break, interdigital time and loop resistance. The scope of these reviews is limited to engineering standards and does not involve examination of the files and records required to be kept by the regulated companies. There is no indication that such records as those concerning interruption of service, accidents, complaints, service reports, and customer information were reviewed by the Commission. Water/Wastewater Department inspections are also limited to the testing of water and wastewater systems, which are largely engineering standards.

PSC has never fined a utility for noncompliance. The Commission is empowered through the statutes to impose fines and penalties for utility violations. However, without a systematic review of utilities, noncompliances are not regularly made known. Planned, organized inspections and audits should serve to monitor and enforce utility compliance with PSC's Rules and Regulations.

In addition, the lack of planned monitoring has not encouraged the Commission to adequately coordinate and use available resources which could expand the scope and increase the effectiveness of the review process. Inspection reports of regulated utilities performed by the South Carolina Department of Labor could be used by PSC on a regular basis. Additionally, the Department of Health and Environmental Control (DHEC) water/wastewater quality tests of regulated utilities could be reviewed by the Commission following each inspection. If used properly, this information could be helpful in both the monitoring and evaluation functions of the Commission.

Lack of Standard Procedures for Inspections

The Commission has not adopted adequate procedures for the inspections it conducts, resulting in insufficient information and documentation of findings and a lack of follow-up. Without standard inspection forms, PSC is unable to evaluate a company's progress over time or to compare one company with another.

In 1981, the Electric Department developed an "Office Record Evaluation Guide" which, if used properly, could serve as an adequate checklist and verify the inspection. However, Department personnel use the guide as an "oral critique and evaluation" and do not retain it

after the inspection. Only a log is kept which records the date, company name and inspector's name for each inspection. No report is filed concerning the results of the inspection.

The Gas Department has a form for reporting the outcome of compliance inspections. However, the Department has not developed an itemized checklist of items to be reviewed. The inspection form directs Gas Department staff to list exceptions to the Rules and Regulations.

A standard checklist is used by the Water/Wastewater Department. These completed forms, however, are not maintained in company files or inspection records but are kept in separate rate case dockets. Forms contain primarily yes/no answers, making it difficult to quantify inspection results. By assigning values on a numerical scale, the Commission could evaluate one company's progress over time or compare one company against another.

The Telecommunications Department files a memo noting central office tests results. The memo adequately documents the test results; however, the Department does not have a standard checklist, nor does it retain working papers to support inspection results and conclusions.

The Utilities Division is in the process of developing compliance checklists. These forms will contribute to a more standard, uniform review for all utilities.

Section 58-3-140 of the South Carolina Code directs the Commission to supervise and regulate every public utility in the State. To be effective and ensure compliance, the Rules and Regulations, regarding records of compliance, complaints, tariffs, accident reports, trouble reports, interruption of service, meter tests and meter history records,

should be enforced through review and inspection of the records, files and facilities of the regulated industries.

Working papers are the link between the inspection and the report. They serve as a record of the results of the inspection and the basis of the inspector's conclusions. The development of a standardized, quantifiable inspection record is necessary if the Commission is to evaluate the utility industry objectively and uniformly. In addition, insufficient and nonuniform documentation does not provide a systematic approach to ensure that utilities are in compliance with regulations. If noncompliances are identified, there should be an established process to monitor or follow-up on corrective steps taken by the utility.

The format of the inspection report forms used by the Commission allows for limited quantification of information because numerical values are not assigned to all areas tested. This allows for less objectivity on the part of the inspector and does not provide for a measure of progress over time or comparison of one facility to another. Further, the lack of uniformity in monitoring the various regulated industries could result in improper billing and inequities in the quality of service to the consumer.

The lack of record keeping and documentation results in a lack of evidence to support the actions taken by PSC. In addition, the absence of procedures for documentation does not ensure that legal and administrative requirements are met in the event PSC findings are challenged.

In conclusion, PSC has not fully carried out its supervisory role. The Commission has merely reacted to utility issues in the past, only conducting inspections in conjunction with rate cases or complaints. Well-planned, documented and systematic compliance inspections of public utilities are essential to PSC's responsibility to protect the customer's safety and interests.

RECOMMENDATIONS

THE GENERAL ASSEMBLY SHOULD CONSIDER AMENDING SECTION 58-27-160 OF THE SOUTH CAROLINA CODE TO AUTHORIZE PSC TO INITIATE A FULL AND COMPLETE MANAGEMENT AUDIT OF ALL PUBLIC UTILITY COMPANIES ONCE EVERY FIVE YEARS, BY A COMPETENT, QUALIFIED AND INDEPENDENT FIRM SELECTED BY THE UTILITY COMPANY AND APPROVED BY THE COMMISSION. SUCH AUDIT SHOULD THOROUGHLY EXAMINE THE EFFICIENCY AND EFFECTIVENESS OF MANAGEMENT DECISIONS AMONG OTHER FACTORS AS DIRECTED BY THE COMMISSION. COSTS FOR THIS REVIEW SHOULD BE PAID BY THE UTILITY AND INCLUDED IN OPERATING EXPENSES. AUDITS PERFORMED BY OTHER COMMISSIONS OR BODIES ON COMPANIES WHICH SERVE JOINTLY SOUTH CAROLINA AND ADJOINING STATES, SHOULD BE CONSIDERED AND REVIEWED BY THE SOUTH CAROLINA PSC WHEN APPROPRIATE.

THE UTILITIES DIVISION SHOULD DEVELOP SYSTEMATIC PROCEDURES FOR CONDUCTING COMPLIANCE REVIEWS OF PUBLIC UTILITIES. THESE PROCEDURES SHOULD INCLUDE REQUIREMENTS TO PROVIDE ASSURANCES THAT UTILITIES ARE

IN COMPLIANCE WITH THE RULES AND REGULATIONS OF THE COMMISSION. A PROCESS SHOULD BE ESTABLISHED TO MONITOR CORRECTIVE STEPS TAKEN BY THE UTILITIES.

THE UTILITIES DIVISION SHOULD DESIGN A STANDARDIZED, QUANTIFIABLE FORMAT FOR THESE INSPECTIONS SO AS TO ENABLE PSC TO UTILIZE THE INFORMATION IT GENERATES FOR TREND ANALYSIS AND TO MORE EFFICIENTLY USE PERSONNEL. THIS INFORMATION SHOULD, IN TURN, BE USED IN THE RATEMAKING PROCESS.

THE UTILITIES DIVISION SHOULD ROUTINELY REVIEW ALL INFORMATION FROM OTHER STATE AND FEDERAL AGENCIES WHICH IS RELEVANT TO REGULATED COMPANIES. THIS INFORMATION SHOULD BE USED IN THE MONITORING PROCESS TO PRODUCE A MORE EFFICIENT UTILIZATION OF STAFF TIME AND RESOURCES.

CHAPTER IV
ADMINISTRATION OF THE PUBLIC SERVICE COMMISSION

Introduction

This chapter describes problems found in the Administration Division of the Commission. The current method of assessing utilities has resulted in a loss of funds to the State as well as overassessment of utilities. In addition, poor management of resources and information and uneconomical allocation of funds have reduced the efficiency of operations of the Commission.

Utility Assessments

Introduction

All expenses and charges for the operation of the Public Service Commission are paid by the companies it regulates, in the form of fees from registration stamps and license tags, motor carrier road taxes, and assessments based on companies' gross revenues.

Each year, the Public Service Commission provides the State Comptroller General with the data used for assessing each regulated company. The Comptroller General then notifies each county of the PSC assessments to be paid by the companies, and the county treasurers collect the assessments and forward them to the Comptroller General. Two problems which result from the current method of assessing utilities are discussed in this section.

Interest Lost on Industry Assessments

Public Service Commission industry assessments have not been paid to the State Comptroller General in a timely manner, resulting in a loss to the State of at least \$217,000. As Table 19 indicates, although the counties collected 95% of the 1980 PSC industry assessments by January 1981, the State did not receive the funds from the counties until as late as August 1981. The State could have earned \$126,869 in interest on the 1980 assessments if the counties had remitted the funds promptly. Interest lost by the State on 1979 PSC industry assessments collected in 1980 totaled \$90,956.

TABLE 19
INTEREST LOST BY THE STATE
ON INDUSTRY ASSESSMENTS
FOR 1979 AND 1980

(Assessments Collected in 1981)

| <u>County</u> | <u>Total^a Assessment</u> | <u>Date 95% of^b Assessments Received by</u> | | <u>Interest</u> | |
|---------------|---|--|--------------|------------------|---|
| | | <u>County</u> | <u>State</u> | <u>Days Lost</u> | <u>Amount Lost¹ by State</u> |
| Florence | \$ 177,682 | Jan. 15 | Apr. 10 | 85 | \$ 5,794 |
| Greenville | 66,938 | Jan. 10 | Aug. 06 | 208 | 5,342 |
| Richland | 1,216,556 | Jan. 31 | Jul. 31 | 181 | 84,477 |
| Sumter | 47,732 | Jan. 15 | May 26 | 131 | 2,399 |
| York | <u>529,703</u> | Dec. 31 ² | May 22 | 142 | <u>28,857</u> |
| TOTAL | <u>\$2,038,611</u> | | | | <u>\$126,869</u> |

(Assessments Collected in 1980)

| | | | | | |
|------------|--------------------|----------------------|---------|-----|------------------|
| Florence | \$ 172,540 | Jan. 15 | May 23 | 128 | \$ 7,398 |
| Greenville | 53,679 | Jan. 10 | May 28 | 138 | 2,481 |
| Richland | 1,101,447 | Jan. 31 | Jun. 27 | 147 | 54,236 |
| Sumter | 36,494 | Jan. 15 | Mar. 18 | 62 | 758 |
| York | <u>519,100</u> | Dec. 31 ³ | May 30 | 150 | <u>26,083</u> |
| TOTAL | <u>\$1,883,260</u> | | | | <u>\$ 90,956</u> |

¹Interest lost was calculated using an annual rate of 14.74% and 12.87%, the prevailing rate on six-month treasury bills January 1, 1981 and 1980, respectively.

²December 31, 1980.

³December 31, 1979.

Source: ^aSouth Carolina Comptroller General.
^bLegislative Audit Council Survey of Counties.

Each October, the Comptroller General notifies each county of the PSC assessments to be paid by the regulated companies. If assessments have not been received by May, the Comptroller General sends a letter reminding the counties to forward the funds as soon as possible. Another letter is sent in July if the funds have not been received. The State has no enforcement powers to require counties to make prompt payment and counties do not receive any administrative funds from the State for making the collections. However, the counties are able to earn interest on the funds not forwarded to the Comptroller General.

Section 58-3-100 of the 1976 South Carolina Code of Laws states that assessments for the expenses of the Public Service Commission "shall be collected by the several county treasurers ... and shall be paid by the county treasurers as collected into the State Treasury..." (Emphasis Added). The State lost over \$217,000 in two years as a result of not earning interest on funds that should have been received from the counties as collected.

Overassessment of Utilities

Motor carriers have not been charged for the expenses of PSC's Administration Division, resulting in an overassessment of regulated utility companies. Utilities are bearing 100% of the costs of the general administration of the agency.

Regulated utilities - electric, gas, telecommunications and water/wastewater companies - were assessed \$1,108,753 for FY 81-82 to defray the costs of PSC's Administration Division, which provides support services for both the Utilities and Transportation Divisions. The 1,300 regulated motor carriers in the State and 21,000 interstate carriers

regulated for safety purposes did not bear any of these administrative costs. Motor carrier registration stamps and license tag fees, motor carrier road taxes, and assessments on railroad companies paid for the expenses of the Transportation Division. The motor carriers were not charged for the expenses of the Administration Division in FY 81-82 because PSC charged the utilities for the total expenses of this Division. Utility companies bore 100% of the \$1,108,753 cost for the Administration Division in FY 81-82. According to PSC, the regulated motor carriers have never paid a portion of Administration Division expenses.

Section 58-23-630 of the 1976 South Carolina Code of Laws requires motor carriers to pay administrative costs:

All license fees for the operation of motor vehicles for hire, collected by the Commission pursuant to the provisions of this article shall be deposited in the State Treasury and, after the costs of administration and collection shall have been deducted, shall be distributed annually by the State Treasurer to the incorporated cities and towns of the State...

Approximately \$1.1 million in surplus motor carrier fees was distributed to cities and towns in FY 80-81. The Transportation Division budget made up 57.2% of the total budget requirement for the Utilities and Transportation Divisions in FY 81-82 and 60% of the total personnel requirement. Using these percentages to estimate the Transportation Division's "fair share" of the Administration Division FY 81-82 budget, the motor carriers should have been charged from approximately \$634,000 to \$665,000. Instead, regulated utilities paid the entire \$1,108,753 for the expenses of the Administration Division. These assessment costs are ultimately passed on to the utilities' customers in the form of higher rates.

RECOMMENDATIONS

THE GENERAL ASSEMBLY SHOULD CONSIDER LEGISLATION TO AMEND SECTION 58-3-100 OF THE 1976 CODE OF LAWS TO PROVIDE FOR THE BILLING OF REGULATED COMPANIES BY THE COMPTROLLER GENERAL. COUNTIES WOULD NO LONGER BE REQUIRED TO COLLECT ASSESSMENTS. THE COMPTROLLER GENERAL SHOULD, ON OR BEFORE THE FIRST OF OCTOBER EACH YEAR, ASSESS EACH COMPANY FOR ITS PROPORTIONATE SHARE OF THE PUBLIC SERVICE COMMISSION'S EXPENSES. ALL ASSESSMENTS SHOULD BE PAID TO THE COMPTROLLER GENERAL BY THE FIRST OF JANUARY OF EACH YEAR. REGULATED COMPANIES THAT HAVE NOT PAID BY JANUARY 1 WILL BE CONSIDERED DELINQUENT AND THEIR NAMES SHOULD BE FORWARDED TO THE PUBLIC SERVICE COMMISSION FOR APPROPRIATE ACTION.

IF THE GENERAL ASSEMBLY DOES NOT CHOOSE TO DEREGULATE MOTOR CARRIERS: THE PUBLIC SERVICE COMMISSION SHOULD CHARGE THE TRANSPORTATION DIVISION FOR ITS "FAIR SHARE" OF THE COSTS OF THE ADMINISTRATION DIVISION.

Management of Resources and Information

The Council's review of resource and information management at the Commission revealed problems in procedures and practices. The lack of written administrative procedures, poor record keeping and retrieval of information, as well as problems in complaints handling have all hampered regulatory oversight and the public's review.

Lack of Written Administrative Procedures

The Public Service Commission has not developed written agency procedures concerning the administration of bookkeeping, travel property management and other agency functions. In a 1977 Program and Operational Review of the Commission, the Audit Council recommended that PSC develop and use a manual of administrative procedures. Further, the State Auditor has noted deficiencies in control over financial transactions and equipment inventory, and has recommended that procedures be established to overcome this situation. However, the Commission has not developed written procedures implementing these recommendations. A lack of managerial initiative to ensure that proper administrative procedures are developed and enforced is indicated by PSC management. Further, the Executive Director has not fulfilled his supervisory responsibility through the formulation of basic written administrative policies and procedures.

Written procedures are necessary to show the existence and understanding of an adequate system of operating controls. Policies and procedures are needed to ensure a sufficient degree of "checks and balances" over the complex operations of agencies. Although there are no State requirements for a Policies and Procedures Manual, such manuals

for the administration and control of agency activities are generally accepted as principles of good management.

Without formally established and written procedures, accountability for the efficient and economical utilization of resources is reduced. The lack of written administrative procedures may make it difficult to perform specific duties without the assistance of experienced personnel. For example, PSC's Executive Director retired for six weeks but was urged to return because his absence, without available written procedures, impeded operation of the Commission. The lack of written policies and procedures hampers management efficiency and effectiveness because it is difficult to hold employees accountable for verbal or nonexistent guidelines. Unwritten procedures can easily be misinterpreted, erroneously communicated and cause training and orientation of employees to be more time-consuming and confusing. Also, without uniformity, the three PSC Divisions - Administration, Utilities and Transportation - all follow different procedures for maintaining records and regulating areas such as travel and retention of records including minutes and supporting documents for agency actions.

The Utilities Division has developed a comprehensive set of procedures that are, for the most part, well-defined for the operations of that Division. These procedures have been conscientiously developed and updated and contribute to the overall efficiency of operations in that Division. In contrast, however, an Executive Director cannot adequately supervise or direct without the establishment of uniform and standardized procedures throughout the agency.

Record Keeping and Information Systems Need Improvement

The Public Service Commission's record keeping and information systems need improvement. Access to resource information is limited for both the staff and the public. PSC does not retain files for an adequate period of time, and has not established a central location or systematic plan for organizing information. Neither has PSC developed a decision precedent manual.

The following are some examples of the Commission's failure to adequately maintain records.

- The Utilities Division Accounting Department has destroyed refund verifications and other working papers after the audit process is complete. Rate case files are maintained for the pending and previous case only. There is no system to index or reference these staff reports or testimony to auditors' and inspectors' files.
- The Electric Department has no records on compliance audits performed prior to 1981.
- PSC has no central location for maintaining public records. Also, staff reports, order/docket files and incoming resource materials are stored within the several departments, making orderly review difficult for both the staff and the public.
- The Commission has no decision precedent manual to provide information regarding past decisions. There is no system of cross-referencing orders, hearings and other matters by subjects or major issues addressed.
- The Rails and Tariffs Department has not separated complaint files from its more than 1,300 carrier files nor maintained a log of complaints, making analysis and review difficult.

Commission personnel stated that space limitations prohibit the establishment of a central information system; however, PSC has not planned for and used available space to the best advantage. Also, microfilming provided by South Carolina Archives was discarded by the Commission in 1978. Electronic data processing resources available in the PSC Research Department, which could provide access, analysis and retrieval of information, were not developed.

Space and equipment should be used in the most efficient manner to give PSC quick access to information concerning the industries it regulates. The public should also have reasonable access to these public records. The use of electronic data processing would provide PSC the capability of storing, expanding and updating information as necessary. Referencing and documenting staff reports and testimony to work papers is needed to provide proper support for reports and to enable demonstration of the nature and scope of examination work.

Especially, regulatory agencies such as PSC that are subject to litigation should retain records as historical evidence of their activities. With current PSC rulings based on past orders, the Commission needs to retain documentation of the basis of its decisions to ensure the availability of the information if requested. Referenced files of auditors and inspectors are a record of regulatory examination and should be kept a sufficient amount of time to answer future legal and administrative questions.

By not establishing uniform procedures for maintaining records, the Commission has allowed the purging of files that should have been retained, and information which could have been useful to the Commission has been destroyed. Analysis could have been performed with a more extensive record.

Further, PSC has not developed a decision precedent manual indexing agency decisions, as recommended by both the Cresap, Pagett & McCormick (CP&M) Study in 1976, and the Audit Council in 1977, even though the Commission agreed to set up such a manual.

Commission decisions which are, in effect, agency policy should be referenced to allow inspection by subject matter. Widely used in the

judicial system, decision precedent manuals are important to allow analysis by staff and to ensure consistency in the decision-making process. In the adjudicative process, it is necessary that Commissioners and all parties to a case know what precedents are applicable or pertinent.

One effect of this situation, as pointed out in the CP&M Study, is that company lawyers who do keep records of PSC decisions have a decided advantage in presenting cases. The study further states that many precedents predate the present Commissioner's terms and are unknown to them. It may be desirable to change precedents, but this is not possible without a hearing strategy based on foreknowledge of existing precedents.

In conclusion, the Administration Division has not provided adequate coordination and oversight to ensure adequate retention of PSC's records and improve the agency's information system. Nor has the agency developed uniform written procedures for record retention and information retrieval, hampering not only the agency's regulatory oversight but also the public's review.

Complaints Handling Needs Improvement

Introduction

Complaints are processed in the Commission's Utilities and Transportation Divisions, where field staff and department chiefs investigate problems in their areas of authority. The Utilities Division processes complaints using procedures revised in 1979. Table 20 summarizes the complaints received and processed by the Division from FY 76-77 to FY 80-81. Forty-eight percent of these complaints were classified as

billing complaints, while 30% were service-related and 22% were miscellaneous complaints. The Transportation Division has no written complaint procedures for implementing the Commission's Rules and Regulations and compiles no statistics on the number of complaints received each year; however, the Audit Council's review of the complaint files in the Transportation Division's Enforcement and Safety Department is included in Table 20.

TABLE 20
COMPLAINTS RECEIVED AND PROCESSED
FY 76-77 THROUGH FY 80-81

| | <u>FY 76-77¹</u> | <u>FY 77-78</u> | <u>FY 78-79</u> | <u>FY 79-80</u> | <u>FY 80-81²</u> |
|--|-----------------------------|-----------------|-----------------|-----------------|-----------------------------|
| <u>Utilities Division</u> | | | | | |
| Electric | 491 | 428 | 412 | 321 | 828 |
| Gas | 113 | 158 | 84 | 73 | 79 |
| Telecommuni- cations | 542 | 995 | 1,009 | 1,089 | 793 |
| Water/Wastewater | <u>211</u> | <u>132</u> | <u>198</u> | <u>255</u> | <u>191</u> |
| TOTAL | <u>1,357</u> | <u>1,713</u> | <u>1,703</u> | <u>1,738</u> | <u>1,891</u> |
| <u>Transportation³ Division</u> | | | | | |
| Law Enforcement/ Safety ⁴ | - | <u>2</u> | <u>18</u> | <u>24</u> | <u>5</u> |
| TOTAL | <u> </u> | <u>2</u> | <u>18</u> | <u>24</u> | <u>5</u> |

¹PSC established a toll-free WATS line for receiving complaints in 1976.

²In 1980, final termination notices sent by electric and gas companies began displaying PSC's toll-free WATS line number.

³Statistics shown are for the Law Enforcement/Safety Department. Files in the Rails and Tariffs Department were inadequate to determine the number of complaints received and processed.

⁴These figures reflect only the complaints processed on complaint forms or by letter. Complaints radioed into the PSC Office by inspectors in the field are not routinely recorded. No complaint files were maintained prior to June 1978.

Source: PSC Utilities Division Synopsis for FY 76-77 to FY 80-81;
Transportation Division complaint files.

The Audit Council surveyed approximately 11% (316 of 2,965) of the complaints on file in the Utilities Division for FY 79-80 and FY 80-81.

Complaints received by PSC's Electric Department in 1979 were disposed of during the agency's move to its present location and, therefore, could not be examined. The Council reviewed all of the complaint files in the Transportation Division's Law Enforcement and Safety Department.

The Council found a lack of coordination and oversight in the Public Service Commission's handling of complaints. This condition results from a lack of centralization of the complaint process. Some problems which arise because of this situation are: (1) complaints received by the Transportation Division are not adequately documented and resolved, and complaint files and statistics are not maintained uniformly; (2) the Commission performs no analysis of complaints to identify problem areas; (3) the Commission inadequately monitors the complaints handling of its regulated companies. The following is a discussion of these problem areas.

(1) Complaints Not Adequately Documented, Resolved and Maintained

Complaints received by the Transportation Division are not adequately documented and resolved, and complaint files and statistics are not maintained uniformly. Two Departments process complaints in the Transportation Division: Rails and Tariffs, and Law Enforcement and Safety.

In the Rails and Tariffs Department, which receives complaints regarding loss or damage of goods, rail safety, rates, and scope of operation, no complaint forms are used. Correspondence with complainants and notations to the files are the only sources of documentation. Department personnel stated that in order to protect confidentiality of sources, some complaints are not recorded.

In addition, the Commission does not have statutory authority to handle complaints for loss or damage of goods and, therefore, takes little action in this area. According to PSC personnel, documented complaints are placed in the individual files of over 1,300 motor and rail carriers. Since no separate complaint files are maintained, a log system should be used to allow for the orderly inspection of the complaints noted in the files. In the Utilities Division, each department uses a log to record complaints received, as well as complaint forms and separate complaint files to document PSC's investigations. PSC personnel told the Council that, overall, Rails and Tariffs processes 70% of the complaints received by the Transportation Division. Since no log is used and no complaints statistics are systematically recorded, the Council could not audit the Rails and Tariffs Department's complaints records and, therefore, did not determine the number or type of complaints filed with the Department.

The Law Enforcement and Safety Department receives complaints regarding scope of operations, motor carrier safety and certification. The Council's review of complaints processing revealed that the closed and pending complaint files were incomplete. As Table 20 indicates, 49 complaints were documented in the Department's closed complaint files from FY 77-78 to FY 80-81. The Council could find no evidence that any complaints were processed during one nine-month span, between November 3, 1980 and August 4, 1981. The Transportation Division Director confirmed that Enforcement and Safety personnel failed to document complaints during this period. In addition, the Department's complaint form does not indicate whether complaints are filed by consumers or industry

competitors. However, 96% (47 of 49) of the closed complaints concerned motor carriers operating with no PSC authority.

The Council's December 1981 examination of the Law Enforcement and Safety Department's pending complaints file disclosed 24 complaints, some dating back to May 1979. However, seven of the 24 "pending" complaints were erroneously listed as pending; these seven complaints were documented as resolved in the Department's closed complaint file. Any action taken to resolve the remaining 17 pending complaints has not been indicated in the records. The Council randomly selected five of the 17 pending complaints for a telephone survey; four of the five complainants had not been notified of any action by the Commission to resolve the complaint. All four were complaints against motor carriers operating without Commission authority and dated as far back as February 1980. Complaints for violations of law deserve prompt action, and citizens should be notified of the results of an investigation.

(2) No Analysis of Complaints

The Commission performs no analysis of complaints it receives to identify problem areas. The Transportation Division produces no reports summarizing the number or type of complaints received each year. Although the Utilities Division prepares an annual report summarizing the number of complaints received by its four departments, no complaints analysis is performed. The number of complaints filed with PSC against each regulated company is not submitted for the Commission's review, nor are reports that analyze the causes of recurrent complaints. Trends are not investigated, and analysis to identify current or future problem areas is not

performed. Good management practices dictate the analysis of complaints to anticipate future problems and to aid in the promulgation of needed regulations. With no analysis of complaints, the Commission makes regulatory decisions based on insufficient information.

(3) Inadequate Monitoring of Complaints Made to Companies

The Commission's monitoring of complaints made to regulated companies is inadequate. PSC does not require all companies to file complaints reports showing, for example, the number of complaints received and the type. Telecommunications companies are required to file quarterly "trouble reports" indicating the number of service complaints received from customers; however, billing and other complaints are not included, and PSC does not verify that the service complaints have been resolved. During rate case proceedings, PSC does not require utilities to submit information regarding complaints processing. Rather, the Commission relies on night hearings for customer complaints information. PSC personnel told the Council that complaints procedures are sometimes investigated on the Commission's periodic visits to utility offices, but the Council could find little documentation of this (see p. 125). The South Carolina Code 58-3-210, gives the Public Service Commission the authority to inspect the property and records of public utilities and regulations mandate that utilities keep records of customer complaints for review and analysis. However, PSC has chosen not to verify or analyze the information submitted or to monitor compliance with regulations.

The overall cause of PSC's lack of coordination and consistency in complaints handling is the lack of a centralized complaints process. No member of the PSC staff oversees and coordinates the handling of complaints by the Utilities and Transportation Divisions. No one is responsible for ensuring that complaints are documented and resolved uniformly in all departments. Centralizing the complaints handling process in the Office of Public Information, which serves as a liaison between the Commission and the public, would result in a more coordinated, consistent complaints process, as well as a more effective use of personnel. Engineers, field representatives and inspectors spending up to 90% of their time processing complaints could concentrate their expertise in more technical areas, while remaining available for complaints assistance.

The handling of complaints is one of the primary functions of the Public Service Commission. Section 58-5-270 of the 1976 South Carolina Code of Laws gives individuals or groups the right to file complaints concerning any "public utility" under the Commission's jurisdiction. Section 58-5-210 of the 1976 South Carolina Code of Laws directs the Commission to oversee the cost and quality of service rendered by public utilities in the State.

The Rules and Regulations of the Public Service Commission state:

Complaints by customers concerning the charges, practices, facilities or services of the utility shall be investigated promptly and thoroughly. Each utility shall keep a record of all such complaints received, which record shall show the name and address of the complainant, the date and character of the complaint, and the adjustment or disposal made thereof. (Section 103-516)*

*These Regulations pertain specifically to wastewater utilities. Similar regulations for electric, gas, telecommunications, and water utilities can be found in Sections 103-316, 345, 416, 445, 616, 628, 716 and 738 of the PSC Rules and Regulations.

The Rules and Regulations further state:

The utility shall keep such records of customer complaints as will enable it and the Commission to review and analyze the utility's procedures and actions. (Section 103-538)*

In addition, water and wastewater utilities are required to file with the Commission an annual summary of complaints unresolved for ten days or longer.

The Commission spends over \$11,000 a year on the toll-free WATS line installed in 1976 to receive complaints and requests for information. This expenditure warrants a more uniform complaints handling process. PSC personnel stated that the WATS line is also used by regulated companies calling PSC and by members of the PSC staff in the field. Since all incoming calls are not logged, the Audit Council could not determine what proportion of the calls are complaints. However, Utilities Division records show that 1,120 complaints were received by the Division over the WATS line in FY 80-81.

Due to a lack of managerial initiative, industry compliance with PSC Rules and Regulations is not ensured under the present system. PSC's lack of monitoring of the handling of complaints by regulated companies could reduce the utilities' incentive to maintain and analyze their complaint records; analysis that would be useful for identifying problem areas and preventing their recurrence. The failure of PSC to analyze complaints can lead to inadequate service, for complaints are a primary means of evaluating the service received by the public. The

*These Regulations pertain specifically to wastewater utilities. Similar regulations for electric, gas, telecommunications, and water utilities can be found in Sections 103-316, 345, 416, 445, 616, 628, 716 and 738 of the PSC Rules and Regulations.

Commission's failure to analyze trends in complaints also results in decisions concerning rates, tariffs and other matters based on incomplete information. Finally, failure to implement a consistent, effective complaints handling process, which ensures that all departments respond uniformly to complaints, causes the public to lose confidence in the Commission as a protector of the public interest.

RECOMMENDATIONS

PSC SHOULD DEVELOP AND USE A MANUAL OF ADMINISTRATIVE PROCEDURES. ALL PROCEDURES SHOULD INCORPORATE STATE REQUIREMENTS AND GOOD MANAGEMENT PRACTICES TO ENSURE THAT EFFICIENCY WILL BE ACHIEVED. IN GENERAL THE PROCEDURES SHOULD BE CLEAR, CONCISE, AND COMPLETE ENOUGH TO:

- (1) SPECIFICALLY RELATE THE DUTIES AND RESPONSIBILITIES TO ALL PERSONNEL AFFECTED BY THEM, AND
- (2) PROVIDE A STEP-BY-STEP DESCRIPTION OF PROCEDURES AND PROCESSES FOR THE ACCOMPLISHMENT OF POLICY OBJECTIVES.

SPECIFIC WRITTEN PROCEDURES IN THE AREAS OF BOOKKEEPING, PROPERTY MANAGEMENT, AND TRAVEL SHOULD BE DEVELOPED OR, WHERE SOME PROCEDURES DO EXIST, THEY SHOULD BE EXPANDED AND REFINED. PSC SHOULD RECOGNIZE

THE NEED FOR AND DEVELOP PROCEDURES FOR ALL AREAS WHERE THE AGENCY CAN ENHANCE EFFICIENCY.

PSC SHOULD DEVELOP AN ACCOUNTING POLICIES AND PROCEDURES SECTION TO BE INCLUDED IN THE RECOMMENDED MANUAL OF ADMINISTRATIVE PROCEDURES. IT SHOULD DEFINE ACCOUNTING PROCEDURES AND POLICIES, DESCRIBE THE VARIOUS FUNDS AND THEIR PURPOSES, AND INCLUDE A CHART OF ACCOUNTS WITH APPROPRIATE DESCRIPTIONS, PURPOSES, AUTHORIZED USAGES, AND CONTENTS OF EACH ACCOUNT. IT SHOULD ALSO INCLUDE STEP-BY-STEP INSTRUCTIONS ON OFFICE ROUTINES.

PSC SHOULD ESTABLISH WRITTEN PROCEDURES FOR PROPERTY CONTROL. THESE PROCEDURES SHOULD DESCRIBE THE AGENCY'S RECORDS SYSTEM WHICH IS BASED ON INVOICE/PURCHASE INFORMATION AND PHYSICAL INSPECTION UPON RECEIPT. THE PROCEDURES SHOULD SPECIFY BOTH THE TIMING OF PHYSICAL INVENTORIES AND RECONCILIATION OF RESULTS TO THE AGENCY'S PROPERTY CONTROL RECORDS.

A STUDY SHOULD BE CONDUCTED BY THE GENERAL SERVICES DIVISION OF PSC'S INFORMATION NEEDS AND AN ADEQUATE SYSTEM IMPLEMENTED TO ENSURE THAT PERTINENT INFORMATION IS RETAINED AND ACCESSIBLE. THE STUDY SHOULD CONSIDER HOW THE DATA PROCESSING EQUIPMENT AT PSC CAN BE USED TO IMPROVE THE EFFICIENCY OF RECORD MAINTENANCE. PSC SHOULD IMMEDIATELY BEGIN DEVELOPMENT OF A PRECEDENT MANUAL THAT INDEXES COMMISSION DECISIONS, CROSS-REFERENCING THE INFORMATION BY SUBJECT MATTER. ORDERS AND DIRECTIVES SHOULD BE INCLUDED AS WELL AS INFORMATION ON COURT RULINGS AS THEY PERTAIN TO APPEALED CASES.

THE COMMISSION SHOULD ESTABLISH A DOCKET ROOM AND LIBRARY TO MAINTAIN SYSTEMATIC PRACTICES OF FILING AND PROVIDE EASY ACCESS TO PUBLIC RECORDS AND RESOURCE INFORMATION.

THE PUBLIC SERVICE COMMISSION SHOULD CENTRALIZE THEIR HANDLING OF COMPLAINTS IN THE OFFICE OF PUBLIC INFORMATION IN CONJUNCTION WITH THE PUBLIC INFORMATION OFFICE'S RESPONSIBILITIES AS A LIAISON BETWEEN THE COMMISSION, THE NEWS MEDIA AND THE PUBLIC.

THE COMPLAINTS PROCESSING RESPONSIBILITIES OF THE PUBLIC INFORMATION OFFICE SHOULD INCLUDE:

- (1) ENSURING THAT COMPLAINTS POLICIES ARE ESTABLISHED AND IMPLEMENTED UNIFORMLY IN ALL DEPARTMENTS,
- (2) RECEIVING AND PROCESSING COMPLAINTS; REFERRING COMPLAINTS TO THE COMPANY OR PSC ENGINEERS AS APPROPRIATE,
- (3) COMPILING DETAILED STATISTICS ON THE PROCESSING OF COMPLAINTS,
- (4) ANALYZING TRENDS TO HELP THE COMMISSION ANTICIPATE PROBLEMS.

THE EXECUTIVE DIRECTOR OF THE PUBLIC SERVICE COMMISSION SHOULD BE RESPONSIBLE FOR COORDINATING AND OVERSEEING PSC'S MONITORING OF INDUSTRY COMPLIANCE WITH COMPLAINTS REGULATIONS. IN ORDER TO HAVE AVAILABLE MORE THOROUGH COMPLAINTS INFORMATION WHEN CONSIDERING RATES, TARIFFS AND OTHER MATTERS, THE COMMISSION SHOULD:

- (1) REQUIRE THAT THE PUBLIC INFORMATION OFFICE MAINTAIN DETAILED RECORDS INDICATING NOT ONLY THE NUMBER AND TYPE OF COMPLAINTS RECEIVED INDUSTRY-WIDE BUT ALSO THE NUMBER AND TYPE RECEIVED AGAINST EACH REGULATED COMPANY,

- (2) ESTABLISH PROCEDURES TO ROUTINELY MONITOR INDUSTRY COMPLIANCE WITH COMMISSION REGULATIONS REGARDING COMPLAINTS,
- (3) PROMULGATE NEW RULES AND REGULATIONS THAT STATE: AN ANNUAL SUMMARY OF THE NUMBER AND TYPE OF COMPLAINTS MAINTAINED BY EACH UTILITY SHALL BE FILED WITH THE COMMISSION, TOGETHER WITH A REPORT SHOWING THE NAME AND ADDRESS OF THE COMPLAINANTS IN CASES THAT REMAINED UNRESOLVED FOR TEN DAYS OR LONGER DURING THE YEAR.

Allocation of Funds

There has been a lack of economy in decisions concerning allocation of funds in PSC operations. Three areas where more economical practices could have resulted in cost savings of more than \$38,000 are: (1) Subsistence; (2) Photography Equipment; and (3) In-House Printing.

Subsistence Payments to Enforcement/Safety Officers

The Public Service Commission has not adopted procedures for the efficient use of subsistence funds. PSC Law Enforcement and Safety Officers are claiming meal reimbursements while performing duties in their assigned areas. Each of PSC's 40 Enforcement and Safety Officers is assigned to one of four districts in the State. Officers are responsible

for inspections in their area. PSC staff estimates that Officers spend approximately 95% of their time in their assigned district. The remaining portion of their time is spent on assignments outside of their assigned district.

Budget and Control Board Regulations allow reimbursement for meals when an employee is over 10 miles from his Official Headquarters and/or residence. Official Headquarters is the location where an employee is employed, which in the case of the Enforcement and Safety Officers is their assigned District. PSC has chosen to allow officers to claim meals when they are more than 10 miles from their home or district office rather than limit reimbursement to times when officers perform duties outside their district.

A 1977 Legislative Audit Council Report on the Public Service Commission recommended that PSC discontinue meal reimbursement to Enforcement and Safety Officers when they are working in their assigned district. PSC has not implemented this recommendation, but stated that about December 1981, they began to limit each officer to a \$30 reimbursement per month. There is no official memo or agency written policy on travel and subsistence reimbursements; consequently, it is difficult to assure accountability in this area.

It is the duty of the Agency Director to operate the agency in the most efficient manner. Enforcement and Safety Officers should not be allowed reimbursement for meals while working in their assigned areas. The 1982 Budget and Control Board Regulations state that Agency Directors have the discretion to increase the 10 mile distance requirement as deemed appropriate. Other State agencies have taken the initiative to restrict unnecessary expenditures in this time of economy and austerity

in spending. The State Law Enforcement Division has placed a 20-mile distance requirement on all employees. The Department of Health and Environmental Control has ceased reimbursements to employees for the noonday meal and has limited motel expenses. The Highway Department follows a policy of allowing personnel to claim subsistence only when they are directed or ordered out of their assigned counties.

Because PSC has allowed Enforcement and Safety Officers to claim meal reimbursements while performing duties in their assigned areas, expenditures estimated to be in excess of \$26,000 were claimed for FY 80-81. If PSC had allowed officers to claim meals only when they were working outside their assigned District, expenditures would have amounted to approximately \$1,399.

Unnecessary Purchase of Photography Equipment

Introduction

The Public Service Commission has not provided adequate oversight and coordination between Divisions, resulting in the unnecessary purchase of photography equipment. An Audit Council review of property and inventory control procedures at PSC reveals inadequate planning for the purchase of property, and inefficient and ineffective use of property.

According to PSC personnel, cameras purchased for the Transportation Division are used to document accidents, complaints, noncompliance reports and other investigations. The Rails and Tariffs Department submits color photographs of evidence to the Federal Railroad Administration for prosecution of violations. Likewise, in the Utilities Division, the Gas Department uses photographs for evidence of violations and accident reports. In the Administration Division, the Director of the

Public Information Office stated that photographs were sent to the media with news releases, given to public officials, sent to publications or displayed at PSC to create a good work atmosphere.

(1) Inadequate Planning for the Purchase of Property

The Commission has not employed adequate controls which ensure the efficient purchase of equipment. Photography equipment purchases for the Administration, Utilities and Transportation Divisions have resulted in the following expenditures totaling over \$4,100:

- From July 1980 to May 1981, the Transportation Division's Rails and Tariffs Department purchased three cameras and related equipment for \$1,196.85.

- From July 1980 to July 1981, the Administration Division's Public Information Office expended \$2,375.86 on photography equipment and supplies. \$1,191.70 was spent for one 35mm camera and related equipment, and \$1,184.16 was spent on darkroom equipment and supplies.

- Prior to 1976, five cameras were purchased by the Utilities Division's Gas Department at a cost of \$620.

The 35mm cameras purchased by both the Gas and Rails and Tariffs Departments could have been made available to the Public Information Office on occasions when the office used photography equipment. However, due to a lack of coordination between Divisions, the Public Information Office unnecessarily expended \$1,191.70 for one 35mm camera and related equipment in July 1980.

(2) Inefficient and Ineffective Use of Property

Darkroom equipment purchased and operated by the Public Information Office was not used efficiently. In July 1980, the Public Information Office purchased darkroom equipment for the in-house processing of photographs, investing \$1,184.16 in equipment and supplies during the next 12 months. Although the

darkroom has the capability to process both black and white and color photographs, the Gas and Rails and Tariffs Departments sent their film to commercial processors. From August 1981 to December 1981, Rails and Tariffs expended over \$250 on commercial processing; Gas Department expenditure records indicate that a minimum of \$70 was spent at commercial developers during 1981. Even the Public Information Office sent film to commercial processors, expending \$246.67 for commercial processing from September 1980 to November 1981.

Further, the effective use of equipment by the Public Information Office is questioned. A review of the darkroom and files from the Public Information Office revealed no evidence of photographs used by that office with news releases or for other publications. No files or documents were kept which demonstrate the use of photographs for "publicity purposes" or to support the objectives of the office to promote and explain the Commission to the public. The Council found only proof sheets, negatives, prints and slides available for review in the darkroom. These consisted primarily of the Commissioners and staff at local meetings, staff gatherings and out-of-town conferences.

Overall, PSC's unnecessary purchase and inefficient use of equipment was due to poor planning and uneconomical allocation of funds. PSC did not adequately study and project their needs for an in-house photography lab. Neither did they consider the photography equipment already available within the agency's various divisions. Agency officials should thoroughly examine alternatives in order to use State resources in the most cost-efficient manner.

The unnecessary purchase of photography equipment is an inefficient use of industry assessments, which costs are ultimately passed on to the customer. Furthermore, eliminating the in-house darkroom would give the Public Information Office staff additional time for other public information activities.

In-House Printing Operation is Not Cost-Efficient

The Public Service Commission's in-house print shop is not the most cost-efficient printing service available to the agency. The State Division of General Services can provide printing services within PSC's time requirements at a savings. The Audit Council determined that PSC expends approximately \$20,000 annually for personnel, paper, supplies, office space and equipment maintenance for the in-house print shop. Based on printing samples and estimated printing volume furnished to the Audit Council by PSC personnel, General Services stated that it can provide comparable printing services to PSC at an annual cost of approximately \$11,000-13,000, a yearly savings of \$7,000-9,000 for PSC.

General Services can provide less costly printing services while meeting the Commission's time requirements. PSC personnel stated that turnaround time is the primary reason for an in-house print shop, chiefly because of statutory deadlines governing the publication of Commission decisions. In a January 10, 1979 letter to a Senate subcommittee regarding consolidation of printing services, PSC's Executive Director stated that a central printing office at General Services would "offer the potential for cost reductions in the areas of printing forms, stationary (sic) and other general office supplies where time is not of principal importance." The printing operation at General Services was

reorganized in 1981, and can provide 24-hour turnaround on printing jobs when necessary. In addition, PSC personnel have estimated that 50% of the Commission's in-house printing consists of forms, stationery and letterhead, where immediate turnaround is not required.

Using General Services' printing operation would also eliminate the need for future purchases of printing equipment by the Commission. PSC has invested over \$7,000 in printing equipment, including \$4,150 for an offset press purchased in 1970. The average life of the press has been estimated to be eight to 12 years, and the Commission's Executive Director has stated that the machine will need to be replaced soon. As of March 1982, the replacement cost for the offset press was \$9,450.

The Commission has not kept records of printing volume and other information, which has not allowed it to perform cost studies of its in-house printing operation, and there is no evidence that PSC has explored alternatives. Agency managers are responsible for determining the cost and productivity of all agency operations and equipment as a part of making management decisions. Officials should make every effort to perform support functions such as printing as efficiently and economically as possible. At least one printing operation outside PSC can serve PSC's printing needs in a reasonable time while saving the Commission approximately \$7,000-9,000 annually. With proper administration and planning, a maximum turnaround time of 24 hours should be sufficient to meet the agency deadlines.

Lowering PSC's administrative costs by using a more cost-efficient, outside printing source would reduce the amount of industry assessments, which are eventually passed on to the customer.

RECOMMENDATIONS

PSC SHOULD ADOPT A POLICY ALLOWING PERSONNEL TO CLAIM SUBSISTENCE REIMBURSEMENT ONLY WHEN, IN THE PERFORMANCE OF THEIR DUTIES, THEY ARE DIRECTED OR ORDERED OUT OF THEIR RESPECTIVE DISTRICT.

THE PUBLIC SERVICE COMMISSION SHOULD DISPOSE OF ITS DARKROOM EQUIPMENT IN THE MOST COST-EFFICIENT MANNER. THE PUBLIC SERVICE COMMISSION SHOULD SEND ALL FILM TO COMMERCIAL PROCESSORS OR COORDINATE WITH ANOTHER STATE AGENCY THAT HAS DARKROOM FACILITIES.

THE COMMISSIONERS AND EXECUTIVE DIRECTOR SHOULD ENSURE THAT ADEQUATE STUDY AND COST-BENEFIT ANALYSIS ARE PERFORMED ON PROJECTS PRIOR TO THEIR IMPLEMENTATION.

THE PUBLIC SERVICE COMMISSION SHOULD CONTRACT FOR ITS PRINTING JOBS WITH GENERAL SERVICES OR ANOTHER OUTSIDE SOURCE, WHICHEVER IS LESS COSTLY AND CAN PROVIDE THE REQUIRED SERVICE. THE COMMISSION SHOULD DISPOSE OF ITS PRINTING EQUIPMENT IN THE MOST COST-EFFICIENT MANNER.

Public Participation

Although PSC has adhered to the Administrative Procedures Act with respect to giving formal notice of public hearings, PSC has restricted public input in proceedings before the Commission. PSC has restricted public input by setting tariffs at business meetings without a public hearing. Business meetings open to the public have not been advertised through the media, although the Commission does send out a "Commission" letter, to approximately 40 who request it, that announces the coming week's agenda and matters awaiting disposition by the Commission. Because business meetings have not been noticed some rate matters such as miscellaneous tariffs have been handled without public participation. Tariffs are rates set for new or special equipment not covered under regular rates. When the Commission approves a tariff rate it then becomes a part of the regular rates in future proceedings. Tariffs can be set for all types of utilities, however, most have been for telecommunication utilities. In FY 80-81, 145 tariff rate establishments for telecommunications utilities were held in Commission business meetings.

PSC has stated that tariff rate establishments take a great deal of time and are repetitious when there are many intervening parties. However, PSC has statutory authority to exclude all testimony found to be irrelevant, immaterial or unduly repetitious. This gives PSC the power to control information that is not applicable to the case at hand.

Administrative adjudicative agencies that are established to protect the public welfare should not restrict public intervention. Since regulation

affects their vital interests, consumers have a right to share in the decision-making process. The regulatory setting is an arena where the public should be confident that their concerns can be heard. Public intervention provides a point of view that might not otherwise be represented.

Business meetings have not provided a proper public setting for tariff matters. They have not been advertised in the news media and, therefore, the public might not be aware of when meetings are held and the agenda to be covered. Public attendance is sparse.

In conclusion, public confidence in the regulatory process could decline, and assurance that the public welfare is being served is less certain when all parties affected may not be given equal opportunity to comment on issues.

RECOMMENDATIONS

PSC SHOULD HOLD TARIFF RATE ESTABLISHMENT HEARINGS IN A PUBLIC SETTING THAT IS DULY ADVERTISED AND NOTICED AS OUTLINED IN THE ADMINISTRATIVE PROCEDURES ACT. PSC SHOULD CONSIDER HOLDING TARIFF RATE ESTABLISHMENTS MONTHLY RATHER THAN WEEKLY IN ORDER TO FACILITATE THE HEARING PROCESS AND IMPROVE PUBLIC PARTICIPATION.

CHAPTER V
SUNSET ISSUES AND EVALUATION

Act 608 of 1978, known as the Sunset Law, contains a series of eight issues which must be addressed in the review of each agency. These requirements encompass the areas of efficiency and effectiveness which will ultimately determine the termination, continuation, or re-establishment of the agency and will also supply to the General Assembly an indication of the agency's public responsiveness and regulatory compliance. The issues and the Audit Council's responses are presented in the following section.

- (1) DETERMINE THE AMOUNT OF THE INCREASE OR REDUCTION OF COSTS OF GOODS AND SERVICES CAUSED BY THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The Public Service Commission has approved increases in revenues amounting to more than \$.5 billion for utilities, and 1,720 general increases to motor carriers in the past five years. Average 1981 rates for residential electric power have increased 47 percent over 1977 rates. Gas rates increased 79 percent from 1976 to 1980; and telephone rates increased 56 percent from 1978 to 1982 (see Graphs 1-4). The cost of regulation is covered by assessment of regulated industry. These costs were \$1.3 million in FY 80-81 for motor carriers and \$921,905 for utilities and \$1,150,362 for agency administration.

(2) WHAT ECONOMIC, FISCAL AND OTHER IMPACTS WOULD OCCUR
IN THE ABSENCE OF THE ADMINISTERING OF THE PROGRAMS
OR FUNCTIONS OF THE AGENCY UNDER REVIEW?

The Commission began to regulate utilities and motor carriers in 1932 and to safeguard the public's interest. It has sought to accomplish these goals through supervising the industry, issuing Certificates of Public Convenience and Necessity, and through fixing just and reasonable rates.

Motor Carriers

Motor carriers should not be regulated. It is in the best economic and fiscal interest of the public to deregulate motor carriers. The growth of technology and communication as well as competition from air carriers has caused the concept of motor carrier regulation to become outdated. Full and free competition offers a more equitable alternative than regulation. Regulation has not effectively replaced competition, but has increased prices and protected the industry. One feature of economic deregulation of intrastate motor carriers is that the industry and ultimately the public would not have to pay more than \$1 million annually for regulation. Also, economic deregulation would allow service to fluctuate by demand, and would allow the industry to be competitive regarding rates and services.

Utilities

Without supervision of an inherently monopolistic industry such as fixed utilities, the public would not be protected from unfair practices and costs. There would be little recourse outside of the courts for complaints on service, billing, rates and other matters. There would not be assurance that utility companies were operating economically and efficiently. In conclusion, regulation of fixed utilities offers a more stable and reasonable alternative than does open and free competition, and more assurance the public need is equitably met.

- (3) DETERMINE THE OVERALL COSTS, INCLUDING MANPOWER, OF THE AGENCY UNDER REVIEW.

The overall cost of the Commission for FY 80-81 was \$3.79 million. Projected expenditures for FY 81-82 total \$4.28 million. The Commission's 145 staff positions accounted for \$2.44 million (65%) of the FY 80-81 expenses. A detailed analysis of State appropriations, revenue and operating expenditures for the five-year period ended June 30, 1981 is presented in Tables 2 and 3 of pages 15 and 16.

- (4) EVALUATE THE EFFICIENCY OF THE ADMINISTRATION OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The main function of the Commission is to supervise and regulate utilities and motor carriers in South Carolina. The Commission has developed Rules of Practice and Procedure regarding

rate hearings. However, regulatory effectiveness is hindered by a statutory base that is outdated, lack of concise statements of regulatory policy and lack of a Decision Precedent Manual to summarize and classify Commission decisions on various regulatory issues. PSC also lacks adequate written administrative procedures and program planning to ensure that adequate staff and resources are available to carry out primary regulatory and supervisory functions such as monitoring of the industry.

- (5) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS ENCOURAGED THE PARTICIPATION OF THE PUBLIC AND, IF APPLICABLE, THE INDUSTRY IT REGULATES.

The Commission has advertised Commission public hearings in major newspapers throughout the State. Night hearings have been held in various parts of the State on rate matters. Business meetings open to the public have not been advertised in the media. Because business meetings have not been noticed and attended, some rate matters such as miscellaneous tariffs have been handled without public participation. In conclusion, the Commission has not ensured adequate public participation in all cases, although it has met statutory directives of the Administrative Procedures Act.

- (6) DETERMINE THE EXTENT TO WHICH THE AGENCY DUPLICATES THE SERVICES, FUNCTIONS AND PROGRAMS ADMINISTERED BY ANY OTHER STATE, FEDERAL, OR OTHER AGENCY OR ENTITY.

The Transportation Division of the Commission duplicates enforcement and safety functions of the State Highway Department (see p. 49). Federal regulation has replaced a large part of State regulation of railroads. The ICC could assume total responsibility for economic regulation of railroads in South Carolina (see p. 53).

- (7) EVALUATE THE EFFICIENCY WITH WHICH FORMAL PUBLIC COMPLAINTS FILED WITH THE AGENCY CONCERNING PERSONS OR INDUSTRIES SUBJECT TO THE REGULATION AND ADMINISTRATION OF THE AGENCY UNDER REVIEW HAVE BEEN PROCESSED.

While the Commission acts upon the majority of complaints in a timely manner, the Transportation Division has not adequately responded to complaints. However, because PSC does not have a uniform procedure on handling complaints the efficiency of the procedure is questionable. Some complainants might not be receiving adequate service. Also, PSC engineers and field representatives generally handle complaints which takes up to 90% of their time. Engineer's time could be better spent in more technical functions (see p. 144).

- (8) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS COMPLIED WITH ALL APPLICABLE STATE, FEDERAL AND LOCAL STATUTES AND REGULATIONS.

PSC has condoned collective rate making by motor carriers which has been held to be in violation of antitrust laws (see p. 28).

APPENDICES



**STATE OF SOUTH CAROLINA
THE PUBLIC SERVICE COMMISSION**

P. O. DRAWER 11649
COLUMBIA, SOUTH CAROLINA 29211

**COMMENTS OF THE SOUTH CAROLINA PUBLIC
SERVICE COMMISSION**

I. Utilities Division

The Utilities Division of the South Carolina Public Service Commission (hereinafter "the Division") responding to certain matters contained in the Report (hereinafter "the Report") of the Legislative Audit Council (hereinafter "the Council"), as pertains to the Utilities Division, would comment as follows:

The Council makes many recommendations and judgements; indicates areas of improvement in the operations of the Staff, and as to the monitoring of construction by the Staff of the Division. The Staff would request that the reader refer to Graph 1 on page 80 of the Report.

This Graph shows that since the latter part of 1977 the retail electric rates in South Carolina have been, and presently are, below both the regional and national average. This Graph speaks for itself in showing that the Commission must be doing an excellent job in its regulation of the utilities. Also, the Council

APPENDIX A (CONTINUED)

chose to compare telephone rates of South Carolina to other States in only one particular group. Had the Council chosen to use an average rate, the Report would show that South Carolina's telephone rates are lower than most of the Southeastern States. Further, the Report failed to point out that South Carolina still maintains a 10¢ pay phone rate, which is substantially lower than North Carolina, with a 20¢ rate, and Georgia and Florida, with a 25¢ rate.

Council further omitted to state whether their recommendations as to on-site inspections could be done with the present personnel available or whether additional personnel would be required. The Council does state in the Report that in spite of the rate case load of the Commission having increased substantially during the last seven (7) fiscal years, the Utilities Division Staff has increased by only one (1) position during this seven (7) fiscal year period although additional personnel has been consistently requested. The Utilities Division has had to make rate case audits a first priority item due to the statutory deadlines of these matters. With the tremendous increase in rate cases, and the limited Staff personnel, the Utilities Division has had to devote less time to compliance and on-site construction inspections than it would have otherwise done.

However, the Commission would still refer the reader to Graph 1, page 80, which shows the South Carolina's electric rates below both regional and national average which must indicate that

APPENDIX A (CONTINUED)

the Commission is doing a reasonable and proper job in regulating and monitoring its utilities.

II. Transportation Division

The South Carolina Public Service Commission (hereinafter "the Commission") respectfully submits the following comments to the Transportation Division portion of the Report of the Legislative Audit Council (hereinafter "the Council"):

The Council has made broad statements and recommendations concerning economic deregulation of the intrastate South Carolina motor carrier industry. Every recommendation made has been based on either (1) the studies performed on an intrastate basis for states other than South Carolina; or, (2) the Council's own personal opinion about economic regulation. There is no factual data to support the Council's contention that economic regulation protects the motor carrier industry more than the public in South Carolina; nor is there evidence that economic deregulation would lower rates for all service.

The Council has taken studies relative to the motor carrier industry in other states, such as Florida, Maine, New Jersey, and Delaware, and inferred that South Carolina is no different from these states as to transportation needs and service availability. This is totally erroneous. How can South Carolina be compared to these states? None of these states has the blend of agricultural and textile industry nor the blend of urban and rural society such as South Carolina.

South Carolina has a good transportation industry which has developed for over fifty years under economic regulation. Why should a system which has created such an industry be destroyed on the recommendation of one employee of the Council?

From the first interview which the Council had with the Transportation Division Staff, it was evident to the Staff that the Council's Auditor had predetermined that economic deregulation would be his recommendation. If one Auditor, with little or no knowledge of the transportation industry in South Carolina can make such drastic recommendations to the Legislative Audit Council, with the Council in turn making such recommendations a part of its report, the Council should reexamine its own functions and goals to see if it is truly performing the duties and responsibilities for which the Council was created.

The recommendation that the truck safety function could be performed more efficiently by the Weight and Size Enforcement section of the Department of Highways and Public transportation is totally without merit. The Commission currently enforces the same safety standards as the U. S. Department of Transportation and there is, therefore, uniformity with Federal law which applies to motor carriers in South Carolina. There is currently a bill pending in the Legislature to give the Commission safety jurisdiction over all trucks in South Carolina. The Commission's safety inspection procedures encompass not only the thorough inspection of driver credentials, equipment, cargo, containers, placarding, and packaging, but also a procedure for assuring that violations discovered are corrected by the company to assure safe operations in the future. The Commission's inspectors also perform economic regulatory duties such as assuring that carriers are properly insured, charging approved rates, are properly licensed and authorized

APPENDIX A (CONTINUED)

by the Commission to perform such service. The duties of enforcing the statutes, rules, and regulations of the Commission can be more efficiently performed by Commission personnel. We fail to see the efficiency of one agency enforcing the statutes, rules, and regulations of another agency.

The following are comments addressing certain issues contained in the Report. As a result of the Council's express page limitation for agency response to the Council's voluminous Report, we are unable to address all issues.

1. "Restricted entry" into the trucking industry results primarily because of an Applicant's express desire to transport a specific commodity in a specific territory. It is further impacted by the laws of this State governing the proof required by an Applicant sufficient to justify approval of an Application for operating authority.

2. The basis for the Council's conclusion that the legal requirement for an Applicant to carry his burden of proof makes entry into the transportation industry difficult, is erroneous and improper. It is completely improper to attempt to determine the propriety of a decision of the Commission based upon an analysis of authority held, authority applied for and the number of protestants/intervenors in any particular case. Such an analysis, by its very nature, ignores the intricacies entailed in the Commission's performance of its legislative mandate and, further, disregards well-established judicial considerations. It is well-established that a reviewing court cannot substitute its judgement for that of the Commission upon a question as to which there may be a difference of intelligent opinion. Accordingly, it is definitely improper for the council to attempt to do so.

APPENDIX A (CONTINUED)

3. Self-imposed restrictions on carriers are not a direct result of regulation; therefore, any inefficiencies and waste resulting therefrom are not a consequence of regulatory considerations. Applicants for operating authority seek only the commodities and territory for which they have the knowledge, capability, and resources to serve.

4. There has never been an instance where an Applicant for operating authority has been denied a Certificate and, subsequently, obtained the same authority by way of the purchase or other transfer of a Certificate.

5. The sale, lease or other transfer of a Certificate is governed by the laws of this State.

6. The Council's report fails to recognize that it is extremely difficult for a certificated carrier to establish, through opposition to an Application, that a grant of the proposed authority will impair his business concerns to the detriment of the public.

7. The laws governing collective ratemaking were promulgated by the General Assembly, not the Commission. (S. C. Code Ann., § 58-23-100, 1976).

8. All regulated carriers are not participants to MTRB tariffs. There is no comparison in the Report of the respective tariffs and rates of the MTRB participants and tariffs and rates of carriers who do not participate in the MTRB. Further, there is no analysis or consideration of the ability of MTRB participants to choose not to ascribe to certain tariffs and rates established through the MTRB. Individual MTRB member carriers may flag out of proposed rate increases or make independent announcements of rates lower than the published MTRB tariff rate, which is done on a regular basis, subject to approval by the Commission.

APPENDIX A (CONTINUED)

9. The Commission does establish rates according to individual carriers financial considerations.

10. The Report erroneously states that by allowing "price fixing" the Commission may be unlawfully hindering the full and free competition of motor carriers. Obviously, the Commission is obligated to uphold the laws of this State and carries forth its duties, pursuant to § 58-23-1010, in the manner prescribed by statute. It is completely improper for the Council to assert that by acting pursuant to the laws of this State the Commission is acting unlawfully.

11. Although the Transportation Division has no written guidelines stating which expenses should be included or excluded for ratemaking purposes, the Commission adheres to well established ratemaking precepts which incorporate specific considerations of the propriety of the inclusion/exclusion of specific expenses for ratemaking purposes. It is incorrect to assert that since the Transportation Division has no specific written guidelines, that a carrier's approved rates are based upon the inclusion of clearly disallowable expenses. It is incorrect to assert that the Commission has not fulfilled its regulatory responsibilities because of the nature of the audit procedures of the Staff.

12. The conclusion of the Council that certificated carriers are not serving their authorized areas and that the Commission does not revoke "dormant" certificates, and, consequently, that regulation has not guaranteed adequate service to the public, is patently without foundation. The Council's conclusion is based upon a survey of the annual reports submitted by certificated carriers which reflect "no activity" in certain areas. The Council fails to consider:

APPENDIX A (CONTINUED)

(A) Whether a carrier is holding himself out to provide the service which it is obligated to provide;

(B) Seasonal factors affecting the provision of service;

(C) Orders of the Commission, issued subsequent to public hearings, either requiring a certificated carrier to continue serving an area which it seeks to stop serving, or approving the revocation of authority to serve an area where the need for service is no longer apparent;

(D) The Commission Staff on a regularly scheduled basis, by way of inspection of the Commission's files and records, petitions the Commission for the issuance of a Rule to Show Cause against motor carriers who fail to comply with the Motor Vehicle Carrier Laws of South Carolina, and the Rules and Regulations issued thereunder, and who are, therefore, not holding themselves out to the public to provide the service for which authority is held.

(E) As long as a carrier is holding itself out to provide service, and does provide such service upon request, a lag in "activity" cannot be perceived as a failure to provide service to the public. Further, "dormant" authority can never be used to preclude a grant of authority to an Applicant, since the holder of authority who intervenes in a proceeding must prove, among other things, that he is actively providing the service which he is attempting to keep another from receiving authority to provide. Therefore, the Council erroneously concludes that:

(a) That the Commission allows carriers to hold dormant authority.

(b) That holders of dormant authority prohibit entry of new carriers into market areas which they are not serving.

(c) That the public is not being served in areas where the alleged dormant authority is held.

APPENDIX A (CONTINUED)

13. The Council's contention that the truck safety function could be performed more efficiently under the Weight and Size Enforcement section of the Highway Department is erroneous. Safety inspections are performed by a highly trained technical staff. Full time safety inspectors have been trained by Federal Highway Administration, Department of Transportation, and Bureau of Motor Carrier Safety Agents to perform inspections of equipment, drivers, and cargo. Such inspections include log books and medical certification of drivers to assure that drivers are trained, capable, and alert to handle the vehicle driven and cargo transported. The vehicles are scrutinized to determine proper mechanical operating condition as well as proper placarding of the vehicle. Various commodities require different placarding. If vehicles are not properly placarded and an accident does occur, the resulting improper action by firemen and other emergency personnel could be disastrous. The policing of proper packaging, labeling, and loading of cargo is also a duty of the safety inspector. If certain hazardous or radioactive materials were transported with other commodities, contamination can occur. The performance of the above duties of the safety inspectors requires more time and is totally different from those of the Highway Department.

14. The recommendation by the Council that inspectors should not receive a meal allowance when working their own territory is totally contrary to Budget and Control Board guidelines for reimbursement of State employees, such guidelines of which the Council is aware. Inspectors of the Commission are State employees and should not be subjected to different standards than any other State employee. The Council's report states that the official headquarters of an inspector is his home territory. However, the Comptroller General has determined that the official headquarters of an inspector is his residence.

15. The Council contends that "because capital costs in the trucking industry are relatively low, it would be relatively easy for an individual to purchase trucking equipment and compete with a trucking firm trying to monopolize the industry." This is definitely false. The purchase price of one tractor-trailer unit alone is approximately \$70,000 - \$100,000. Although this may be low in comparison to the capital intensive utility industry, it is certainly not a "relatively easy" purchase which can be made by an individual, particularly in light of current economic conditions.

16. The conclusion of the Council that one agency could administer the safety of all vehicles more efficiently is erroneous. The Department of Highways and Public Transportation, according to the Council's report, has jurisdiction over all vehicles. However, the broad jurisdiction of the Highway Department is not currently being exercised, whereas the limited jurisdiction of the Public Service Commission is being fully exercised. The Council further concludes that the application of safety regulations would be more uniform, which is also erroneous. The Commission adopted the U. S. Department of Transportation Safety Rules and Regulations for Motor Carriers so that the Commission's safety regulations for vehicles would be uniform with the U. S. Department of Transportation, which also polices truck traffic in South Carolina, and for uniformity with other states enforcing safety regulations on interstate motor carriers. The Council in its report failed to state that the Commission's Transportation Inspectors work simultaneous check points with the Interstate Commerce Commission's agent for South Carolina and the U. S. Department of Transportation Safety Inspectors for this State.

APPENDIX A (CONTINUED)

17. The Council completely disregards regulated passenger transportation issues in its determinations pertaining to economic deregulation. Until such time that there is substantive evidence compiled, based upon specific studies of the South Carolina transportation industry, any move towards deregulation would be premature. Studies which analyze and identify, with particularity, the problems existing in this State with regulation, and the effects which deregulation will have upon the economy and the people of this State, are fundamental to an informed decision relative to this matter. A hasty decision to deregulate the regulated transportation industry in South Carolina, based upon conditions existing in other States, would be totally improper. None of the studies relied upon by the Council in support of its position were conducted for the purpose of analyzing the nature of the transportation industry in this State or the effects which deregulation will have upon the people and the economy of this State.

APPENDIX A (CONTINUED)

III. ADMINISTRATION

The statements in the report on pages 135-137 with respect to the State Comptroller General and the counties reporting assessments are matters not within the responsibilities or duties of the Commission.

The statements in the report on pages 137-139 with respect to the alleged overassessment of utilities for the administration of the Public Service Commission is a matter which is not within the responsibility or duty of the Commission.

Throughout its report, the Audit Council is severely critical of the Commission using its maximum legal time limits in conducting its functions and additionally recommends the Commission abolishing its in-house printing operations. It is ironic that during the exit conference with the Audit Council Staff, the Commission was informed that the Council's report would be released on June 30 or July 1, 1982, according to whether or not the report could be printed on time. It should be noted that the maximum statutory deadline for release of this report is June 30, 1982. We take note that this Commission has never failed to meet a statutory deadline due to printing and that the Council itself is having a problem meeting its statutory deadline.

IV. EXECUTIVE DIRECTOR

The Executive Director of the Commission is offended by and takes strong exception to the statements of the Audit Council that "the Executive Director has not fulfilled his supervisory responsibilities..." With respect to the Audit Council's comments on page 141 of the report, the Executive Director affirmatively states that his responsibilities and duties have been carried out in an effective, efficient and responsible manner. The Executive Director has performed his functions in compliance with the rules and regulations of the Budget and Control Board and all state agencies. The need for any further written administrative policies and procedures is not warranted and, as admitted in the report on page 141, is not required by the State. Direct day-to-day supervision by the Executive Director is far more effective than any written administrative manual. Recommendations such as establishing a work paper flow chart are ludicrous and a waste of taxpayers money. There are no verbal guidelines administered by the Executive Director. The Executive Director takes exception to statements on page 141 that "lack of written procedures impeded normal operations of the Commission" when the Executive Director retired for six weeks. The Executive Director denies that this is true. Written procedures cannot be a substitute for experience and ability. The Executive Director

takes exception to the comments appearing in the report on page 144, and states affirmatively that the Commission's records have always been safeguarded during his administration. The Executive Director notes no difficulties in the Commission Staff's handling of complaints and specifically notes that complainants are satisfied with the actions taken by the Commission Staff. The Audit Council's report does not dispute this fact. The Executive Director has the overall responsibility for complaints filed with the Commission and ensures that these complaints are properly handled and specifically disputes the findings in the comments on page 156 of the report. Commission Staff personnel follow the rules and regulations of the Budget and Control Board in regard to travel allowance. All expense vouchers regarding safety and transportation inspectors' allowance for meals are accompanied by statements attached to the vouchers stating that they have complied with the regulations of the Budget and Control Board (being more than 10 miles from their residence) and the employees are therefore entitled to this subsistence. This is not a matter of discretion with the Executive Director. The Executive Director denies that there has been any unnecessary purchasing of photographic equipment, as commented on page 159 of the report. The gas safety inspectors and the rail safety inspectors work out of the Commission's offices 90% of their working time, with their own photographic equipment in hand. This, of course, would make it impossible for the Public Information

APPENDIX A (CONTINUED)

Director to make use of their equipment. The Executive Director denies that the in-house printing operation of the Commission is not cost effective, as stated on page 162 of the report. In fact, the in-house printing operation is cost effective, resulting in monetary savings. The in-house printing operation is absolutely necessary for meeting the Commission's statutory deadlines involving the printing of voluminous materials. Is an out-house printing operation available at midnight and on weekends as the Commission's must be? Much of the printing, i.e., Commission rate Orders and legal documents must remain confidential until such materials are required to be made public. This can only be accomplished with an in-house printing operation.

In summary, the Executive Director believes he has been treated unfairly, unreasonably, and unprofessionally in this report. Specifically, the Executive Director is a career state employee with over 33 years experience in all phases of Public Service Commission activity. The records will reflect that his management of budget matters has resulted in a savings to the State and hundreds of thousands of dollars returned to the General Fund. The Executive Director was not interviewed, nor did he come in contact with anyone on the Audit Council Staff with qualifications approaching his qualifications or experience. The Executive Director feels very strongly that the full report made by the Audit

APPENDIX A (CONTINUED)

Council should be valued after a close look is taken at the experience and qualifications of its staff. In conclusion, the Executive Director would like for these printed comments to reflect that he is proud of all his Staff and the job they have done in serving the public of South Carolina. As the Council's report shows, electric rates in South Carolina have been, and presently are, below both the regional and national average; therefore, it must be concluded that the Commission is doing a good job.

APPENDIX B
LIST OF TABLES

| <u>Number</u> | | <u>Page</u> |
|---------------|---|-------------|
| 1 | Composition of the South Carolina Public Service Commission | 6 |
| 2 | Public Service Commission Source of Revenues FY 76-77 Through FY 80-81 | 15 |
| 3 | Public Service Commission Expenditures by Division and Source of Funds FY 76-77 Through FY 80-81 | 16 |
| 4 | Regulated Intra and Interstate Transportation Operating Revenue and Customers Year-Ended December 31, 1980 | 18 |
| 5 | Analysis of General Rate Increases Awarded to Motor Truck Rate Bureau Members Calendar Years 1980 and 1981 | 30 |
| 6 | Analysis of Motor Carrier General Rate Increases Awarded From 1976 through 1981 | 36 |
| 7 | Sample of Overcharges by Motor Carriers FY 76-77 through FY 80-81 | 40 |
| 8 | Transportation Division Compliance Audits, 1976 through 1981 | 42 |
| 9 | Comparison of ICC and Other States' Minimum Insurance Requirements for Freight and Passenger Carriers | 47 |
| 10 | Examples of State Agencies' Enforcement Respon- sibilities for Truck Safety Laws | 51 |
| 11 | Operating Revenues and Customers for South Carolina Intrastate Privately-Owned Utilities Year-Ended December 31, 1980 | 77 |
| 12 | Major Investor-Owned Utilities' Rate Increases 1975 to 1982 | 78 |
| 13 | Percentage Increase in Average Monthly Electric Bills, July 1, 1977 to July 1, 1981 | 81 |
| 14 | Maximum Time States Allow From the Suspension of Proposed Rates Until the Final Order | 96 |

APPENDIX B
LIST OF TABLES
(CONTINUED)

| <u>Number</u> | | <u>Page</u> |
|---------------|---|-------------|
| 15 | Major Utilities that Placed Rates Under Bond | 98 |
| 16 | Electric Utilities Refund Schedules | 102 |
| 17 | Sales Tax Refunds | 105 |
| 18 | Compliance Inspections of Utility Facilities, 1977 through 1981 | 127 |
| 19 | Interest Lost by the State on Industry Assessments for 1979 and 1980 | 136 |
| 20 | Complaints Received and Processed FY 76-77 through FY 80-81 | 146 |

APPENDIX C

LIST OF GRAPHS

| <u>Number</u> | | <u>Page</u> |
|---------------|---|-------------|
| 1 | Comparison of Average Monthly Residential Electric Bills for Investor-Owned Utilities in the United States, July 1, 1977 to July 1, 1981 | 80 |
| 2 | Comparison of Average Monthly Residential Electric Bills For Major Investor-Owned Utilities in South Carolina, July 1, 1977 to July 1, 1981 | 80 |
| 3 | Comparison of Average Monthly Residential Gas Bills, 1976 to 1980 | 83 |
| 4 | Comparison of Monthly Residential and Business Telephone Rates, Southern Bell Telephone Company, 1978 and 1982 | 85 |

APPENDIX D
AVERAGE MONTHLY RESIDENTIAL ELECTRIC BILLS
FOR INVESTOR-OWNED UTILITIES IN THE UNITED STATES¹

JULY 1, 1977 to JULY 1, 1981
(1,000 KWH Monthly Consumption)

| | <u>July 1, 1977</u> | <u>July 1, 1978</u> | <u>July 1, 1979</u> | <u>Jan. 1, 1980</u> | <u>July 1, 1981</u> |
|---------------------|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| South Carolina | \$37.86 | \$39.88 | \$43.75 | \$44.35 | \$55.72 |
| Region ² | \$39.58 | \$42.46 | \$45.49 | \$46.91 | \$58.67 |
| United States | \$37.50 | \$40.63 | \$44.44 | \$45.71 | \$59.45 |

¹These figures are illustrated in Graph 1.

²Region includes South Carolina, North Carolina, Georgia, Florida, Alabama, Mississippi, Virginia.

APPENDIX E
AVERAGE MONTHLY RESIDENTIAL ELECTRIC BILLS
FOR MAJOR INVESTOR-OWNED UTILITIES IN SOUTH CAROLINA¹

JULY 1, 1977 to JULY 1, 1981

(1,000 KWH Monthly Consumption)

| | <u>July 1, 1977</u> | <u>July 1, 1978</u> | <u>July 1, 1979</u> | <u>Jan. 1, 1980</u> | <u>July 1, 1981</u> |
|----------------------------------|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| Carolina Power & Light | \$36.77 | \$39.94 | \$42.30 | \$40.38 | \$59.59 |
| Duke Power | \$34.56 | \$35.45 | \$39.62 | \$42.08 | \$44.41 |
| South Carolina Electric & Gas | \$42.25 | \$44.25 | \$49.34 | \$50.59 | \$63.16 |

¹These figures are illustrated in Graph 2.

APPENDIX F
AVERAGE MONTHLY RESIDENTIAL GAS BILLS¹

1976 to 1980

(80 MMBTU Annual Consumption)

| | <u>1976</u> | <u>1977</u> | <u>1978</u> | <u>1979</u> | <u>1980</u> |
|---------------------|-------------|-------------|-------------|-------------|-------------|
| South Carolina | \$15.33 | \$17.80 | \$19.53 | \$22.60 | \$27.47 |
| Region ² | \$14.60 | \$17.47 | \$19.47 | \$22.53 | \$27.07 |
| United States | \$13.20 | \$15.53 | \$16.87 | \$19.47 | \$24.07 |

¹These figures are illustrated in Graph 3.

²Region includes South Carolina, North Carolina, Georgia, Florida, Alabama, Mississippi, Virginia.

APPENDIX G



SOUTH CAROLINA

DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION

P.O. BOX 191

COLUMBIA, S.C. 29202

May 26, 1982

Mr. George L. Schroeder
Director, Legislative Audit Council
620 Bankers Trust Tower
Columbia, South Carolina 29201

Dear Mr. Schroeder:

The Department is always interested in improving efficiency and services to the public, not only in our agency but in all areas of State government. From our discussion with representatives of your office, we believe that the Council's proposal for transferring the truck safety inspection functions and positions of the Public Service Commission (PSC) to the Highway Department would have certain advantages and would improve service to the road users with less cost. If the Legislature sees fit to act accordingly the Department will carry out it's mandated responsibilities in as efficient manner as possible.

Yours very truly,

Paul W. Cobb
Chief Commissioner



LEGISLATIVE AUDIT COUNCIL

STATE OF SOUTH CAROLINA

620 BANKERS TRUST TOWER
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE:
803 - 758-5322

April 26, 1982

PUBLIC MEMBERS

ROBERT S. SMALL, JR.
Chairman

F. HALL YARBOROUGH

JERRY D. GAMBRELL

Mr. Paul W. Cobb, Commissioner
S. C. Department of Highways & Public
Transportation
P. O. Box 191
Columbia, S. C. 29202

Dear Mr. Cobb:

Thank you for meeting with two of my staff members on April 22, 1982. The purpose of this meeting was to discuss truck safety inspections and the Council's proposal for transferring the truck safety inspection functions and positions of the Public Service Commission (PSC) to the Highway Department. Currently, both PSC and the Highway Department conduct safety inspections.

EX-OFFICIO MEMBERS

SENATE

NANCY STEVENSON
Lt. Governor
Pres. - Senate

L. MARION GRESSETTE
Pres. Pro Tempore
Chm. - Judiciary Comm.

REMBERT C. DENNIS
Chm. - Finance Comm.

According to the auditors attending the meeting, the following appears to be a feasible means for increasing efficiency of motor carrier inspections.

1. PSC enforcement and safety positions will be transferred to the Truck Weight Enforcement Division of the Highway Patrol. These positions will be used to operate more weight stations and inspect all safety features of trucks.
2. PSC positions responsible for registering interstate and exempt trucks will be transferred to the Highway Department and maintain current responsibilities.
3. Transferred positions will be funded by revenues generated from (1) registration fees of interstate and exempt trucks, (2) PSC's portion of the motor carrier road tax and (3) civil penalty fines collected from overweight trucks.

HOUSE

RAMON SCHWARTZ, JR.
Speaker of House

TOM G. MANGUM
Chm. - Ways & Means Comm.


ROBERT J. SHEHEEN
Chm. - Judiciary Comm.

In accordance with S. C. Code 2-15-120, it is requested that this correspondence be kept confidential until the release of the audit report to the General Assembly.

The Audit Council appreciates your cooperation in its review of the Public Service Commission and would appreciate your written comments on this proposal.

GEORGE L. SCHROEDER
Director

Sincerely,


George L. Schroeder
Director

GLS/par